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RECONCILIATION MARK UP DOCUMENT FOR THE COMMITTEE ON WAYS AND MEANS

Table 1. Committee on Ways and Means Reconciliation Instruction

	fiscal year, in millions	
	1990	1991
Outlays	2,300	2,300
Revenues	5,300	5,300
Either outlays or revenues	400	400
TOTAL DEFICIT REDUCTION TO BE ACHIEVED	8,000	8,000

Note: The amounts in the table are net outlay and net revenue amounts. Under the Budget Act, as amended by Gramm-Rudman (section 310(c)), the Committee is given some leeway (the 20 percent rule) to deviate from the outlay and revenue amounts shown in the table above. It must, however, achieve net deficit reduction of $8.0 billion in both years. Given the fiscal year 1990 reconciliation instruction, the Committee may report net outlay reductions between $0.8 billion and $4.2 billion and net revenue increases between $3.8 billion and $7.2 billion. In addition, the budget resolution allows for increased funding for children's programs, including tax credits, to the extent that the proposals are deficit neutral. The language implies that these programs can be financed with either other outlay reductions or revenue increases.

Table 2. Summary of Recommendations from the Subcommittees

Note: Minus indicates an increase in outlays or a decrease in revenues.

	fiscal year, in millions		Page number
	1990	1991	
H.R. 1278 (early repeal of tax benefits)	253	346	
Subcommittee on Oversight			
Tax penalty reform	0	-21	1
Administration's IRS offset proposal relating to veterans' benefits	0	68	30
Possible option	0	14	30
Subcommittee on Trade			
Trade Agency authorizations	0	0	31
Customs user fees	-153	777	33
Miscellaneous tariff provisions 1/	-148	-196	34
Eliminate Superfund differential	0	0	85
TOTAL	-301	581	
Subcommittee on Social Security			
TOTAL	51	63	86
Subcommittee on Human Resources			
Children's initiative	-138	-430	123
Poor elderly initiative	-177	-266	142
Miscellaneous amendments	-5	0	147
Quality Control amendments	0	-314	148
Unemployment Compensation amendments	500	1,000	152
TOTAL	180	-10	
Subcommittee on Health			
Part A	747	148	158
Part B	1,142	1,430	175
Parts A and B	838	927	199
Beneficiaries	315	445	235
Other	0	0	236
TOTAL	3,042	2,950	
Miscellaneous Reconciliation issues	N/A	N/A	237
Subcommittee on Select Revenue Measures			
Revenues	-334	-187	243
TOTAL - direct spending	2,436	2,062	
TOTAL - authorizations	-226	-255	
TOTAL - revenues	455	1,674	
GRAND TOTAL - deficit reduction	2,891	3,736	

1/ There is table detailing these provisions on page 80. The numbers here have been adjusted for fiscal year.

Note: All of these estimates are preliminary. For reconciliation scoring, only direct spending and revenue provisions count. Deficit reduction is net revenues plus net outlay savings.

Table 3. Committee on Ways and Means Reconciliation Provisions
(CBO and JCT preliminary estimates, in millions)

Note: Minus indicates a decrease in revenues or an increase in outlays.

	1990	1991	1992	1993	1994	Page number
H.R. 1278 - Early repeal of tax benefits	253	346	351	310	213	
Administration's IRS offset proposal relating to veterans' benefits	0	68	149	207	215	30
Possible option	0	14	27	31	33	30
Subcommittee on Oversight						
1. Tax penalty reform	0	-21	-53	-30	6	
a. Reformation of reporting penalties						1
b. Accuracy penalties						9
c. Preparer, promoter, and protester						17
d. Delinquency penalties						24
e. Administrative recommendations						27
Subcommittee on Trade						
1. H.R. 2443 Trade Agency Authorizations	0	0	0	0	0	31
2. Customs user fees	-153	834	73	0	0	33
3. Customs salaries and expenses	0	-57	-80	-12	-4	
3. Miscellaneous tariff provisions 1/	-148	-196	N/A	N/A	N/A	34
4. Eliminate Superfund differential	0	0	0	0	0	85
TOTAL	-301	581	-7	-12	-4	
Subcommittee on Social Security						
1. Independent agency (auth.)	*	1	1	1	1	86
2. Increase in retirement test - age 65-69	-60	-120	-140	-150	-170	88
Freeze earnings limit - age 62-64	20	30	30	30	30	88
3. Increase in special minimum benefit	-60	-80	-90	-100	-110	89
4. Repeal of retroactive benefits	150	160	160	160	150	91
5. Beneficiary services	-11	-10	-5	-5	-6	92
- authorization	-31	-31	-31	-32	-32	92
6. Representative payee (auth.)	-10	-3	-3	-3	-3	102
7. Adopted child benefits	-5	-12	-16	-21	-22	107
8. Religious exemptions (rev.)	-1	-1	-1	-1	-1	108
9. DI work incentives	*	-1	-1	-3	-4	109
10. DI benefits during appeal	-8	-36	-48	-55	-65	111
11. SSN for legalized aliens	N/A	N/A	N/A	N/A	N/A	112
12, 13, and 14. Minor and technical	*	*	*	-1	-2	114
15. Railroad life insurance (rev.)	*	*	*	*	*	117
16. Railroad 401(k) (rev.)	2	2	2	2	2	118
17. Codification of Rowan (rev.)	0	0	0	0	0	120
18. Recoup benefits through IRS offset	20	125	90	60	45	121
- authorization	-5	-10	-5	-5	-5	121
19. Preeffectuation review	4	6	8	9	11	122
- authorization	4	5	5	6	6	122
TOTAL- Direct Spending	50	62	-12	-76	-143	
TOTAL- Authorizations	-42	-38	-33	-33	-33	
TOTAL- Revenues	1	1	1	1	1	

(CBO and JCT preliminary estimates, in millions)

Note: Minus indicates a decrease in revenues or an increase in outlays.

	1990	1991	1992	1993	1994	Page number
Subcommittee on Human Resources						
CHILDREN'S INITIATIVE						
A. Child Care and the Working Poor						
1. Title XX SSBG increase	0	-190	-390	-590	-600	123
2. Sense of Subcommittee resolution	0	0	0	0	0	123
B. Foster Care and child welfare amendments						
1. Increase child welfare authorization	-98	-132	-134	-134	-134	124
2. Extend ceilings & transfer authority	-5	-7	-7	-2	0	125
3. Prevention report	*	*	*	*	*	125
4. Foster parent training	-1	-1	-1	-1	-1	127
5. Health/Education case plans	-2	-3	-3	-3	-3	128
- ESPDT services for foster care	-18	-18	-18	-18	-18	128
6. Adolescent's block grant	-75	-100	-100	-25	0	129
7. Improve data collection	0	-1	*	*	*	130
8. Improve accountability	*	*	*	*	*	134
C. SSI disabled children amendments						
1. Individual assessment	-18	-50	-75	-105	-130	137
- authorization	-2	-2	-2	-2	-2	137
2. Presumptive eligibility	-4	-7	-7	-7	-7	137
3. Revise listings	*	-18	-23	-30	-35	138
4. Children's outreach	-3	-5	-7	-8	-10	139
- authorization	-1	*	*	*	*	139
5. Income averaging	-1	-1	-2	-2	-2	140
6. U.S. children abroad	-1	-2	-2	-2	-2	140
7. Intergenerational demo project (auth.)	-1	-1	-2	-2	-2	141
D. Child Support Enforcement amendments						
1. Extend/modify IRS intercept	0	-2	-2	-2	-2	141
2. Make permanent and expand Medicaid transition in CSE cases	-10	-25	-25	-30	-30	142
TOTAL - Children - direct spending	-138	-430	-662	-825	-840	
INITIATIVE FOR THE POOR ELDERLY						
1. SSI benefit increase ($2/mo.)	-60	-90	-95	-145	-105	142
2. SSI Outreach	-70	-110	-110	-105	-105	143
- authorization	-20	-5	-5	-5	-5	143
3. Representative payee reform (auth.)	-5	-1	-1	-2	-2	143
4. Modify 1/3 reduction	-45	-60	-65	-70	-70	145
- authorization	-5	-3	-3	-3	-3	145
5. Transportation gifts	*	*	*	*	*	145
6. Separated couples	*	*	*	*	*	146
7. Burial spaces	*	*	*	*	*	146
8. Work incentives for SSDI recipients	-2	-6	-9	-11	-14	147
TOTAL - Elderly - direct spending	-177	-266	-279	-331	-294	
MISCELLANEOUS AMENDMENTS						
A. Unemployment Compensation						
1. Option for school employees	-5	0	0	0	0	147
2. Collateral estoppel	0	0	0	0	0	148
B. Family Support Act	0	0	0	0	0	148

(CBO and JCT preliminary estimates, in millions)

Note: Minus indicates a decrease in revenues or an increase in outlays.

	1990	1991	1992	1993	1994	Page number
AFDC/QUALITY CONTROL AMENDMENTS						
1. Resolve backlog of disallowances	0	-314	-515	-167	-161	148
2. Permanently modify QC system	0	0	0	0	0	150
UNEMPLOYMENT COMPENSATION AMENDMENTS						
1. Improve extended benefits	0	-500	-500	-500	-500	152
2. Promote training	0	0	0	0	0	153
3. Improve administrative financing	-300	-300	-300	-300	-300	154
4. Improve trust fund solvency (rev.)	800	1800	2600	2800	2600	155
5. Credit reduction rate	0	0	0	0	0	156
TOTAL - UC amendments - direct spending	-300	-800	-800	-800	-800	
TOTAL - UC amendments - revenues	800	1800	2600	2800	2600	
TOTAL - Human Resources - direct spending	-620	-1810	-2256	-2123	-2095	
TOTAL - Human Resources - authorizations	-132	-144	-147	-148	-148	
TOTAL - Human Resources - revenues	800	1800	2600	2800	2600	
Subcommittee on Health						
PART A						158
1. Capital at -15% in 1990	675	100	0	0	0	158
2. Hospital payments						159
a. Reduce payment by 1.35% / ProPAC differential	530	660	730	790	870	161
c. Increase update for rural	-135	-165	-185	-205	-220	161
d. Rural referral centers	-20	-35	-40	-45	-50	161
e. Newly designated sole community hos.	-30	-55	-60	-65	-70	161
h. EACH demonstration projects	0	-10	-20	-25	-25	162
- transition grants (auth.)	-25	-40	-40	-40	-40	162
k. Increase disproportionate share	-225	-280	-310	-335	-365	166
3. Rebase long-term and cancer hospitals	-28	-42	-47	-47	-52	167
4. Hospice payments	-20	-25	-30	-35	-40	168
5. Miscellaneous Part A provisions						169
g. Cancer protocal demo (auth.)	-2	-2	-2	-2	-2	173
TOTAL - Part A - direct spending	747	148	38	33	48	

(CBO and JCT preliminary estimates, in millions)

Note: Minus indicates a decrease in revenues or an increase in outlays.

	1990	1991	1992	1993	1994	Page number
PART B						175
6. Reduce overpriced procedures						175
a. Up to 15% using RB RVS eff. 4/1/90	235	310	345	390	435	176
b. By 8% for radiology services	105	135	150	170	190	177
c. Round anesthesiology to actual time	40	45	55	60	65	177
7. Reduce update for physician services	515	415	465	525	590	178
8. Three part physician payment package	0	0	N/A	N/A	N/A	179
9. Other physician provisions						188
a. New physician customaries	25	150	0	0	0	188
b. Designated specialties	30	35	40	45	50	188
10. Hosp. out-patient capital at -15% in 90	25	20	0	0	0	189
11. Durable medical equipment - total	210	485	545	615	690	190
12. Clinical Labs	90	145	180	205	240	193
13. Mental health services						194
a. Pay psychologists	-15	-25	-30	-40	-40	194
b. Eliminate $1,100 limit	-20	-55	-75	-90	-115	194
14. Miscellaneous Part B						195
a. Increase CRNA payments	-70	-185	-205	-228	-253	196
b. Revise payments to comm. health ctrs	-13	-30	-35	-45	-50	197
c. Small blood labs	-15	-15	-20	-20	-25	197
e. Diabetic shoe inserts	*	*	*	0	0	197
TOTAL - Part B	1,142	1,430	1,415	1,587	1,777	
PARTS A and B						199
15. Delay payments 2 days	470	70	80	80	90	199
16. Secondary payer info from IRS	325	780	935	1090	1245	200
- authorization	-25	-30	-35	-40	-45	200
17. Cap ESRD method II payments	80	140	175	210	255	204
18. Medical effectiveness/outcomes research	0	0	0	0	0	212
19. Hospital patient protection amendments	0	0	0	0	0	215
20. HMO physician incentive plans	0	0	0	0	0	219
21. Physician ownership/referral	0	0	0	0	0	222
22. Miscellaneous Parts A and B						231
a. Coverage for religious orders	-12	-15	-20	-20	-25	232
c. Medicare buy-in for SSDI benef.	*	-3	-7	-12	-18	233
d. Hospital based nursing schools	-25	-45	-50	-55	-55	233
- authorization	*	-1	-1	-1	-1	233
e. GAO review of LTC insur. standards	0	0	0	0	0	233
TOTAL - Parts A and B	838	927	1113	1293	1492	
BENEFICIARIES						
23. Extend 25% Part B premium rule for one year	315	445	470	500	525	235

(CBO and JCT preliminary estimates, in millions)

Note: Minus indicates a decrease in revenues or an increase in outlays.

	1990	1991	1992	1993	1994	Page number
OTHER						236
24. Extend COBRA coverage from 18 to 29 for SSI disabled	*	*	*	*	*	236
TOTAL - Health - direct spending	3,042	2,950	3,036	3,413	3,842	
TOTAL - Health - authorizations	-52	-73	-78	-83	-88	
Miscellaneous Reconciliation Issues						
1. Tax treatement of OPIC	*	*	*	*	*	237
2. Exclusion for overseas allowances - DOD	*	*	*	*	*	238
3. Nonrecognition of capital gains	*	*	*	*	*	240
4. Oil spill liability trust fund taxes	N/A	N/A	N/A	N/A	N/A	241
TOTAL	N/A	N/A	N/A	N/A	N/A	
Subcommittee on Select Revenue Measures						
1. Extension of targeted jobs tax credit	-47	-134	-196	-173	-97	243
2. Rehabilitation tax credit	-8	-21	-29	-39	-48	246
3. H.R. 1761 - Corporate minimum tax	-200	300	500	100	-200	251
4. Extension and modification of low income housing credit	-79	-332	-680	-936	-994	262
TOTAL - Select Revenue Measures - revenues	-334	-187	-405	-1048	-1339	

1/ There is a table detailing these provisions on page 80.
* - less than $500,000.

Note: Unless otherwise indicated, each provision represents a change in direct spending. For purposes of reconciliation scoring, authorizations do not count, because they require further action by the Appropriations Committee.

SUBCOMMITTEE ON OVERSIGHT

EXPLANATION OF THE IMPROVED PENALTY ADMINISTRATION AND COMPLIANCE TAX ACT

A. Information Reporting Penalties (Title I of the bill, new secs. 6721-6724 of the Code, and secs. 6011 and 6038 of the Code)

Present Law

In general

Any person that fails to file an information return with the Internal Revenue Service on or before the prescribed filing date is subject to a $50 penalty for each failure, with a maximum penalty of $100,000 per calendar year. Information returns relating to interest and dividends are subject to this $50 penalty for each failure, but without any cap on the total amount of penalty that may be imposed. In addition, any person that fails to provide a copy of an information return (a "payee statement") to a taxpayer on or before the prescribed due date is subject to a penalty of $50 for each failure, with a maximum penalty of $100,000 per calendar year. If a person fails to include all of the information required to be shown on an information return or a payee statement or includes incorrect information, then a penalty of $5 may be imposed with respect to each such failure, with a maximum penalty of $20,000 per calendar year. Stricter penalty provisions apply in the case of interest and dividend returns and in the case of intentional failures to comply with the information return requirements.

A penalty may also be imposed for each failure to include a correct taxpayer identification number on a return or statement and for each failure to furnish a correct taxpayer identification number to another person. The amount of the penalty that may be imposed is either $5 or $50 for each failure, depending on the nature of the failure.

Foreign provisions

Income of foreign persons subject to withholding

Persons having control, receipt, custody, disposal, or payment of certain types of U.S. income of foreign persons are required to deduct and withhold U.S. tax from such income under chapter 3 of the Code's income tax provisions (secs. 1441-1464). Generally, any person required to serve as a withholding agent under chapter 3 must provide each income recipient an annual withholding statement (Form 1042S) and must file all required Forms 1042S with the IRS accompanied by a return (Form 1042) summarizing the information on the Forms 1042S (Reg. sec. 1.1461-2). As described above, the Code generally provides penalties for each failure to file a required information return with the IRS and each failure to provide a required payee statement. These penalties do not apply, however, to each failure with respect to Forms 1042S.

Information reporting

Generally, every U.S. person is required to report certain information concerning any foreign corporation that such person controls and information relating to transactions between the corporation and certain specified persons. Failure to provide such information subjects the U.S. person to a monetary penalty plus a denial of foreign tax credits (sec. 6038). These information reporting requirements and this penalty do not specifically refer to all types of information needed to determine tax liabilities with respect to controlled foreign corporations.

Explanation of Provisions

Overview

The bill modifies the information return penalties provided under present law in order to encourage persons to file correct information returns even though such returns are filed after the prescribed filing date. The subcommittee has established a three-tier penalty structure in which the amount of the penalty varies with the length of time within which the taxpayer corrects the failure. The subcommittee believes that this structure will give taxpayers an incentive to correct their errors as rapidly as possible. The subcommittee also provides that taxpayers may correct a *de minimis* number of errors and avoid penalties entirely. The bill makes uniform the reporting requirements applicable to magnetic media and requires a study of service bureaus, which file information documents on behalf of other persons.

Failure to file correct information returns

Under the bill, any person that fails to file a correct information return with the Internal Revenue Service on or before the prescribed filing date is subject to a penalty that varies based on when, if at all, the correct information return is filed. If a person files a correct information return after the prescribed filing date but on or before the date that is 30 days after the prescribed filing date, the amount of the penalty is $15 per return, with a maximum penalty of $75,000 per calendar year. If a person files a correct information return after the date that is 30 days after the prescribed filing date but on or before August 1, the amount of the penalty is $30 per return, with a maximum penalty of $150,000 per calendar year. If a correct information return is not filed on or before August 1 of any year, the amount of the penalty is $50 per return, with a maximum penalty of $250,000 per calendar year.

The subcommittee chose this initial 30-day period for filing correct information returns with a low penalty because it believes that it is vital to the integrity of the self-assessment system that taxpayers receive their payee statements on a timely basis (generally, these must be provided by January 31). The preparation of these payee statements given to taxpayers is integrally connected with the preparation of the parallel information returns given to the IRS. The subcommittee believes that this initial 30-day period gives filers of these information returns an appropriate amount of time within which to correct failures with respect to documents prepared for the IRS without jeopardizing the provision of the payee statements directly to taxpayers on a timely basis. Similarly, the subcommittee chose the August 1 date because this is approximately the date on which the IRS begins intensive processing and use of this data. Consequently, submission of the data after this date is effectively equivalent to not providing the data at all. The subcommittee expects that in future years advancements in available technology may permit the IRS to utilize this data earlier in the year. If this proves to be the case, the subcommittee expects the IRS to request that the Congress consider modifying this deadline legislatively.

The bill also provides a special rule for de minimis failures to include the required, correct information. This exception applies to incorrect information returns that are corrected on or before August 1. Under the exception, if an information return is originally filed without all of the required information or with incorrect information and the return is corrected on or before August 1, then the original return is treated as having been filed with all of the correct required information. The number of information returns that may qualify for this exception for any calendar year is limited to the greater of (1) 10 returns or (2) one-half of one percent of the total number of information returns that are required to be filed by the person during the calendar year. The use of 10 returns for this purpose effectively provides a special small-business rule in this penalty. According to IRS statistics, approximately 84 percent of payors who file information returns with the IRS file 10 or fewer forms. Thus, these payors will have until August 1 to correct without penalty errors of omission or commission on information returns that were originally timely-filed with the IRS. If the total number of returns corrected by the taxpayer exceeds the de minimis threshold, only the number exceeding the threshold is subject to penalty. This specific de minimis rule in no way restricts the ability of the IRS or the courts to grant a waiver based on reasonable cause (discussed below).

In addition, the bill provides special, lower maximum levels for this penalty for small businesses. Small businesses are defined as firms having average annual gross receipts for the most recent 3 taxable years of less than $5 million. The maximum penalties for small businesses are: $25,000 (instead of $75,000) if the failures are corrected on or before 30 days after the prescribed filing date; $50,000 (instead of $150,000) if the failures are corrected on or before August 1; and $100,000 (instead of $250,000) if the failures are not corrected on or before August 1.

The subcommittee intends that taxpayers who correct errors in payor statements filed with IRS also make any necessary parallel corrections to payee statements provided to taxpayers. In addition, the subcommittee intends that the substance of the current IRS temporary regulations (Treas. Reg. sec. 301.6723-1T(b)), providing an exception from penalty for inconsequential omissions and inaccuracies, be continued and expanded to apply to information returns, payee statements, and failures to comply with other information reporting requirements (new secs. 6721, 6722, and 6723).

In addition, the subcommittee notes that the IRS permits taxpayers to request extensions of time to file information returns (such as by Form 8809). The subcommittee approves of the existence of administrative procedures to consider requests for extension and expects that these types of procedures will continue to be available to payors.

The bill maintains the present-law rules for failures that are due to intentional disregard of the filing requirement. Failure to correct information returns within a reasonable time after being requested to do so by the IRS could be considered to be intentional disregard. In addition, some have expressed to the subcommittee the belief that the overall caps on these penalties are inappropriate, in that payors who are required to file large number of information returns or payee statements may ignore the requirements to do so and pay the maximum penalty as a "cost of doing business" where it is less than the cost of compliance would be. The subcommittee believes that the general caps serve an important function and should be retained. The subcommittee believes that behavior such as ignoring filing requirements in the manner just described is intentional disregard of those requirements, and that payors who engage in such behavior should be subject to the higher penalties (without caps) that apply in cases of intentional disregard.

The operation of these provisions is illustrated by the following examples:

Example 1. Bank A is required to file 1,000 information returns with the IRS by the last day of February, and it does so. It subsequently discovers errors in 15 of the information returns. It submits corrected information returns to the IRS on July 15. Under the bill, Bank A is subject to a penalty of $150 (5 information returns times $30 penalty each for late filing; 10 information returns are not subject to penalty under the *de minimis* rule).

Example 2. Insurance Company B is required to file 500 information returns by the last day of February, but it negligently fails to do so. Upon discovering its error, it files the information returns with the IRS on March 20. Under the bill, B is subject to a penalty of $7,500 (500 information returns times $15). Under present law, B is subject to a penalty of $25,000 (500 information returns times $50).

Failure to furnish correct payee statements

Under the bill, any person that fails to furnish a correct payee statement to a taxpayer on or before the prescribed due date is subject to a penalty (as under present law) of $50 per statement, with a maximum penalty of $100,000 per calendar year. If the failure to furnish a correct payee statement to a taxpayer is due to intentional disregard of the requirement, the bill generally provides a penalty of $100 per statement or, if greater, 10 percent[2] of the amount required to be shown on the statement, with no limitation on the maximum penalty per calendar year. The subcommittee has not altered the present-law deadline by which these payee statements must be furnished, because it believes that it is vital to the integrity of the self-assessment system that taxpayers receive their payee statements on a timely basis. Many taxpayers rely on the timely receipt of these payee statements so that these taxpayers can complete their own tax returns on a timely basis.

Failure to comply with other information reporting requirements

Under the bill, any person that fails to comply with other specified information reporting requirements on or before the prescribed date is subject to a penalty of $50 for each failure, with a maximum penalty of $100,000 per calendar year. The information reporting requirements specified for this purpose include any requirement to include a correct taxpayer identification number on a return or statement and any requirement to furnish a correct taxpayer identification number to another person. The bill coordinates this penalty with the penalty for failure to file correct information returns and the penalty for failure to file correct payee statements by making this penalty inapplicable to failures penalized under those provisions.

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[2] Five percent for several types of statements.

Waiver, definitions, and special rules

The bill consolidates the waiver standards relating to information reporting into one provision. The bill provides that any of the information reporting penalties may be waived if it is shown that the failure to comply is due to reasonable cause and not to willful neglect. The subcommittee intends that for this purpose, reasonable cause exists if significant mitigating factors are present, such as the fact that a person has an established history of complying with the information reporting requirements. The separate, higher waiver standard under present law for interest and dividends is repealed. Interest and dividend returns and statements are consequently subject to this general waiver standard. The subcommittee intends that payors of interest and dividends that comply with the present-law due diligence standards be considered (for purposes of this bill) to have reasonable cause.

Foreign provisions

Penalties for failure to file withholding statements

The bill integrates the penalty for failure to file Form 1042S and failure to provide Form 1042S to the payee into the general penalty structure. Thus, the bill treats each Form 1042S required to be filed with the IRS and provided to a payee as an information return and as a payee statement as those terms are defined in section 6724. Accordingly, each failure to file any required Form 1042S will be subject to a separate penalty under section 6721, and each failure to provide a payee any required Form 1042S will be subject to a separate penalty under section 6722.

Penalties for failure to report information with respect to certain foreign corporations

The bill clarifies the reporting requirements and penalties imposed by section 6038 by expressly applying those provisions to failures to provide certain information with respect to related parties, such as controlled foreign corporations of which the person subject to the requirements is a U.S. shareholder.

Uniform requirements for returns on magnetic media

The bill provides that uniform magnetic media requirements apply to all information returns filed during any calendar year. The bill accomplishes this by making statutory the requirement currently contained in IRS regulations that persons filing more than 250 information returns file those returns on magnetic media. The bill makes this requirement applicable to all types of information returns. Thus, the bill repeals the provision of present law that requires persons filing more than 50 information returns relating to payments of interest, dividends, and patronage dividends to file all such returns on magnetic media. The subcommittee also intends that the IRS permit payors to file in as many formats as is feasible, and that IRS requirements keep pace with technological advances. The bill provides that the penalty for failing to file information returns on magnetic media when required to do so applies only to the number required to be so filed that exceeds 250. The penalties for failure to file correct information returns would apply to the first 250 returns.

The bill provides that the IRS is to take into account (among other factors) the ability of the taxpayer to comply at a reasonable cost with the magnetic-media filing requirements. The subcommittee intends that the IRS take into consideration other instances of undue hardship, such as temporary equipment breakdowns or destruction of magnetic media equipment, in granting one-year or multi-year exemptions from this requirement.

Study of procedures to prevent mismatching

The bill requires the General Accounting Office, in consultation with the Treasury Department, to conduct a study on whether, if the name and taxpayer identification number of any person that is set forth on an information return do not correspond to the name and taxpayer identification number of such person contained on the records of the IRS, the IRS should be permitted to disclose to the person that has filed such information return such information as may be necessary to determine the correct name and taxpayer identification number. The study should also consider (1) alternative means of correcting the mismatch between names and taxpayer identification numbers that involve the least amount of disclosure of confidential taxpayer identity information, (2) what exact information is it that IRS has in its records that would help resolve mismatches, (3) how the IRS can better process in a timely manner name change information (for example due to marriage or divorce) received initially by the SSA, which IRS uses to revise its records, and (4) how taxpayers can best inform the IRS of a name or address change, prior to waiting until the next tax return filing date. A report on the study, together with any recommendations, is to be submitted to the tax-writing committees of the Congress by June 1, 1990. In the interim, the IRS should establish a procedure and contact point within the IRS where taxpayers themselves (or information return filers who obtain a exception from the taxpayer) can obtain a listing of the names that the IRS recognizes as valid when matching information returns with a particular taxpayer identification number.

Study of service bureaus

The bill requires the General Accounting Office, in consultation with the Treasury Department, to conduct a study of whether service bureaus engaged in the business of transmitting information returns or other documents to the IRS on behalf of other persons should be subject to registration or other regulation. A report on the study, together with any recommendations, is to be submitted to the tax-writing committees of the Congress not later than July 1, 1990.

The subcommittee is concerned that some service bureaus may not be effectively communicating with their customers as to difficulties the IRS has encountered with the data the service bureau has transmitted on behalf of payors. This failure of communication may increase the difficulty that both the actual payor and the IRS have in resolving problems with the transmitted data. In addition, it may be difficult for payors to assess the relative competence of individual service bureaus, in that the IRS cannot legally state whether or not it has encountered problems with a particular service bureau. The GAO study should consider problems such as these.

Effective Dates

The information reporting provisions of the bill generally apply to information returns and payee statements the due date for which (determined without regard to extensions) is after December 31, 1989.

B. Accuracy Penalties (Title II of the bill, new secs. 6662-6665 of the Code, and secs. 6621(c), 6653, 6659, 6659A, 6660, and 6661 of the Code)

Present Law

Negligence penalty

If any part of an underpayment of tax required to be shown on a return is due to negligence or disregard of rules or regulations, a penalty may be imposed equal to 5 percent of the total amount of the underpayment. An underpayment of tax that is attributable to a failure to include on an income tax return an amount shown on an information return is treated as subject to the negligence penalty absent clear and convincing evidence to the contrary.

Fraud penalty

If any part of an underpayment of tax required to be shown on a return is due to fraud, a penalty may be imposed equal to 75 percent of the portion of the underpayment that is attributable to fraud.

Substantial understatement penalty

If the correct income tax liability of a taxpayer for a taxable year exceeds that reported by the taxpayer by the greater of 10 percent of the correct tax or $5,000 ($10,000 in the case of most corporations), then a substantial understatement exists and a penalty may be imposed equal to 25 percent of the underpayment of tax attributable to the understatement. In determining whether a substantial understatement exists, the amount of the understatement is reduced by any portion attributable to an item if (1) the treatment of the item on the return is or was supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed on the return or on a statement attached to the return. Special rules apply to tax shelters.

Valuation penalties

If an individual, personal service corporation, or closely held corporation underpays income tax for any taxable year by $1,000 or more as a result of a valuation overstatement, then a penalty may be imposed with respect to the amount of the underpayment that is attributable to the valuation overstatement. A valuation overstatement exists if the valuation or adjusted basis of any property claimed on a return is 150 percent or more of the correct value or adjusted basis. The amount of the penalty that may be imposed increases from 10 to 20 to 30 percent of the underpayment attributable to the valuation overstatement as the percentage by which the valuation claimed exceeds the correct valuation increases. Similar penalties may be imposed with respect to (1) an underpayment of income tax that is attributable to an overstatement of pension liabilities and (2) an underpayment of estate or gift tax that is attributable to a valuation understatement.

Explanation of Provisions

Overview

The bill consolidates into one part of the Internal Revenue Code all of the generally applicable penalties relating to the accuracy of tax returns. The penalties that are consolidated are the negligence penalty, the substantial understatement penalty, and the valuation penalties. These consolidated penalties are also coordinated with the fraud penalty. The bill repeals the present-law versions of these penalties. The bill reorganizes the accuracy penalties into a new structure that operates to eliminate any stacking of the penalties. The bill is effective for returns the due date for which is after December 31, 1989.

Accuracy-related penalty

The accuracy-related penalty, which is imposed at a rate of 20 percent, applies to the portion of any underpayment that is attributable to (1) negligence, (2) any substantial understatement of income tax, (3) any substantial valuation overstatement, (4) any substantial overstatement of pension liabilities, or (5) any substantial estate or gift tax valuation understatement.

(1) Negligence

If an underpayment of tax is attributable to negligence, the negligence penalty is to apply only to the portion of the underpayment that is attributable to negligence rather than, as under present law, to the entire underpayment of tax. This is a significant change from present law. Under present law, if any portion of an underpayment is attributable to negligence, the negligence penalty applies to the entire underpayment (both the portion attributable to negligence and the portion not attributable to negligence). Thus, under present law, a taxpayer who has an underpayment, only a small portion of which was attributable to negligence, is subject to the same penalty as a taxpayer with the same underpayment, all of which is attributable to negligence, even though the behavior of the first taxpayer is arguably less culpable than the behavior of the second taxpayer. The bill rectifies this inequity by applying the negligence penalty only to the portion of the underpayment attributable to negligence.

Negligence includes any careless, reckless, or intentional disregard of rules or regulations, as well as any failure to make a reasonable attempt to comply with the provisions of the Code. In addition, the bill repeals the present-law presumption under which an underpayment is treated as attributable to negligence if the underpayment is due to a failure to include on an income tax return an amount shown on an information return. As a practical matter, even in the absence of a statutory presumption, evidence of such a failure is still strong evidence of negligence.

(2) Substantial understatement of income tax

The accuracy-related penalty that applies to the portion of an underpayment that is attributable to a substantial understatement of income tax is the same as the substantial understatement penalty provided under present law with three principal modifications. First, the rate is lowered to 20 percent. Second, the subcommittee expands the list of authorities upon which taxpayers may rely (currently contained in Treasury regulations) to include proposed regulations, private letter rulings, technical advice memoranda, actions on decisions, general counsel memoranda, information or press releases, notices, and any other similar documents published by the IRS in the Internal Revenue Bulletin. In addition, the list of authorities is to include General Explanations of tax legislation prepared by the Joint Committee on Taxation (the "Blue Book"). Third, the bill requires the IRS to publish not less frequently than annually a list of positions for which the IRS believes there is no substantial authority and which affect a significant number of taxpayers. The purpose of this list is to assist taxpayers in determining whether a position should be disclosed in order to avoid the substantial understatement penalty. Thus, if a taxpayer takes a position that is enumerated on this list, the taxpayer could choose to disclose that position to avoid imposition of the substantial understatement component of the accuracy-related penalty. However, inclusion of a position on this list is not conclusive as to whether or not substantial authority exists with respect to that position. If, however, there is litigation as to whether there is substantial authority, and the court concludes that the IRS is correct in the belief that there is not substantial authority for the position, then this penalty would apply. The subcommittee believes that this list will be useful to taxpayers, in that it will assist taxpayers in determining whether substantial authority exists with respect to a particular issue on the list. Although the list is not exclusive, the subcommittee intends that the IRS make the list as comprehensive as practical, which will make it more useful to taxpayers and their advisors. The subcommittee intends that there should be no inference that substantial authority exists with respect to positions that are not included on this list. Disclosure of a position for purposes of this penalty does not necessarily prevent imposition of the negligence penalty. Thus, for example, if a taxpayer discloses a frivolous position, the imposition of the negligence penalty could be appropriate.

(3) Substantial valuation overstatement

The penalty that is to apply to the portion of an underpayment that is attributable to a substantial valuation overstatement is generally the same as the valuation overstatement penalty provided under present law with five principal modifications. First, the bill extends the penalty to all taxpayers. The subcommittee believes that this modification increases the fairness of this component of the accuracy-related penalty, in that the penalty is imposed upon proscribed behavior, regardless of who engages in it. Second, a substantial valuation overstatement exists if the value or adjusted basis of any property claimed on a return is 200 percent or more of the correct value or adjusted basis. Third, the penalty is to apply only if the amount of the underpayment attributable to a valuation overstatement exceeds $5,000 ($10,000 in the case of most corporations). This increases five-fold the threshold below which the penalty does not apply to individuals. Fourth, the amount of the penalty for a substantial valuation overstatement is 20 percent of the amount of the underpayment if the value or adjusted basis claimed is 200 percent or more but less than 400 percent of the correct value or adjusted basis. Fifth, as explained below, the bill provides that the rate of this penalty is doubled if the value or adjusted basis claimed is 400 percent or more of the correct value or adjusted basis. The bill retains the special rules in present law that apply to charitable deduction property. The subcommittee believes that raising both the threshold and the minimum percentage will eliminate from the penalty's scope a number of instances of good-faith valuation disputes that may be subject to penalty under present law. As under present law, valuation misstatements that do not fall within the scope of this or the following elements of the accuracy-related penalty may still be subject to penalty if they are attributable to negligence or fraud or give rise to a substantial understatement of income tax.

(4) Substantial overstatement of pension liabilities

The bill is to apply the accuracy-related penalty to substantial overstatements of pension liabilities. This penalty is derived from the present-law penalty in section 6659A. The subcommittee has, however, modified the present-law penalty by providing that the taxpayer is subject to this component of the accuracy-related penalty only if the actuarial determination of pension liabilities (taken into account for purposes of computing the deduction under paragraph (1) or (2) of section 404(a)) is 200 percent or more of the amount determined to be correct (under present law, the penalty applies to claims 150 percent or more in excess of the amount determined to be correct). As under present law, this penalty applies only if the underpayment attributable to the valuation overstatement exceeds $1,000.

(5) Substantial estate or gift tax valuation understatement

The bill is to apply the accuracy-related penalty to substantial estate or gift tax valuation understatements. This penalty is derived from the present-law penalty in section 6660. The subcommittee has, however, modified the present-law penalty by providing that the taxpayer is subject to this penalty only if the value of any property claimed on an estate or gift tax return is 50 percent or less of the amount determined to be correct. (Under present law, the penalty applies to claims that are 66 2/3 percent or less of the amount determined to be correct.) In addition, the subcommittee has modified the present-law penalty by increasing five-fold the threshold below which the penalty does not apply, from $1,000 to $5,000. The subcommittee believes that raising both the threshold and the minimum percentage will eliminate from the penalty's scope a number of instances of good-faith valuation disputes that may be subject to penalty under present law.

(6) Gross valuation misstatements

The bill provides that the rate of the general accuracy penalty is to be doubled (to 40 percent) in the case of gross valuation misstatements. There are three types of gross valuation misstatements. The first is the same as the substantial valuation overstatement component of the accuracy-related penalty, except that the doubling is to apply only to valuation overstatements claimed on a return that are 400 percent or more of the amount determined to be the correct amount. The second is the same as the substantial overstatement of pension liabilities component of the accuracy-related penalty, except that the doubling is to apply only to overstatements of pension liabilities that are 400 percent or more of the amount determined to be the correct amount. The third is the same as the substantial estate or gift tax valuation understatement component of the accuracy-related penalty, except that the doubling is to apply only to valuations claimed on the estate or gift tax return that are 25 percent or less of the amount determined to be the correct amount.

Fraud penalty

The fraud penalty, which is imposed at a rate of 75 percent, applies to the portion of any underpayment that is attributable to fraud.

The subcommittee has retained the special rule in present law that determines the portion of the understatement that is attributable to fraud. The bill provides that, if the IRS establishes that any portion of an underpayment is attributable to fraud, the entire underpayment is treated as attributable to fraud, except with respect to any item that the taxpayer establishes is not attributable to fraud. The subcommittee has clarified the taxpayer's burden of proof in establishing the items not attributable to fraud (present law is unclear on this issue). The subcommittee has provided that the taxpayer must establish the items not attributable to fraud by a preponderance of the evidence. The subcommittee has not altered the present-law burden of proof imposed on the IRS in establishing fraud initially; the IRS must continue to meet its burden of proof by clear and convincing evidence. The subcommittee believes that it is appropriate that the burden imposed on the IRS be higher than the burden imposed on a taxpayer in these circumstances.

Under the bill, the accuracy-related penalty is not to apply to any portion of an underpayment on which the fraud penalty is imposed. (Under present law, the fraud penalty is coordinated in this manner with the negligence penalty, but not with the other components of the accuracy-related penalty.) However, the accuracy-related penalty may be applied to any portion of the underpayment that is not attributable to fraud.

Definitions and special rules

The bill provides special rules that apply to each of the penalties imposed under the new structure. First, the bill provides standardized exception criteria for all of these accuracy-related penalties. The bill provides that no penalty is to be imposed if it is shown that there was reasonable cause for an underpayment and the taxpayer acted in good faith. The enactment of this standardized exception criterion is designed to permit the courts to review the assertion of penalties under the same standards that apply in reviewing additional tax that the Internal Revenue Service asserts is due. By applying this unified exception criterion to all the accuracy-related penalties, the subcommittee believes that taxpayers will more easily understand the standard of behavior that is required. The subcommittee also believes that this unified exception criterion will simplify the administration of these penalties by the IRS.

The subcommittee is concerned that the present-law accuracy-related penalties (particularly the penalty for substantial understatements of tax liability) have been determined too routinely and automatically by the IRS. The subcommittee expects that enactment of standardized exception criterion will lead the IRS to consider fully whether imposition of these penalties is appropriate before determining these penalties.

In addition, the subcommittee has designed this standardized exception criterion to provide greater scope for judicial review of IRS determinations of these penalties. Under the waiver provision contained in present law, the Tax Court has held that it can overturn an IRS determination of the substantial understatement penalty on reasonable cause and good faith grounds only if the Tax Court finds that the IRS abused its discretion in asserting the penalty. The subcommittee believes that it is appropriate for the courts to review the determination of the accuracy-related penalties by the same general standard applicable to their review of the additional taxes that the IRS determines are owed. The subcommittee believes that providing greater scope for judicial review of IRS determinations of these penalties will lead to greater fairness of the penalty structure and minimize inappropriate determinations of these penalties.

The subcommittee believes that the application of standardized exception criteria to the negligence component of the accuracy-related penalty will result in several consequences that are beneficial to taxpayers. First, the complete, item-specific disclosure of a non-frivolous position on a tax return may generally be considered to permit an exception from the negligence penalty insofar as such disclosure would tend to demonstrate that there was no intentional disregard of rules or regulations. Disclosure must be full and substantive, parallel to the disclosure required under the substantial understatement component of the accuracy-related penalty; completing and filling in a tax form is by itself insufficient disclosure for this purpose. In addition, the disclosure must be clearly identified as being made to avoid the imposition of the accuracy-related penalty. Imposition of the negligence component of the accuracy-related penalty would not be eligible for exception due to disclosure where the taxpayer fails to keep proper books and records or to substantiate items properly. Second, the application of standardized exception criteria to the negligence component of the accuracy-related penalty may also permit a taxpayer to avoid imposition of that penalty where the taxpayer makes a good-faith challenge to the validity of an IRS regulation, if the taxpayer discloses (in the manner just described) that the taxpayer is taking the position and makes specific reference to the regulation being challenged. As under present law, frivolous challenges to IRS regulations would be subject to penalty. The subcommittee intends that the terms "reasonable cause" and "good faith" be interpreted under the bill as those terms are interpreted under present law.

Second, the bill provides that an accuracy-related or fraud penalty is to be imposed only if a return has been filed. This is intended to improve the coordination between the accuracy-related penalties and the failure to file penalties. Under present law, the courts have dealt with a number of difficult interpretative issues on the relationship between the penalty for failure to file a tax return and the accuracy-related penalties. The subcommittee determined that it would clarify the law if the penalty for failure to file were entirely separate and distinct from the accuracy-related penalties. (The bill also provides for an increase in the failure to file penalty where that failure is due to fraudulent failure to file.)

Third, the bill provides a standard definition of underpayment for all of the accuracy-related penalties. This standard definition is intended to simplify and coordinate the definitions in present law; it is not intended to be substantively different from present law.

The bill retains the general rule of present law that interest on these penalties commences with the date the return was required to be filed. The subcommittee believes this rule is appropriate because the behavior being penalized is reflected on the tax return, so that imposition of interest from this date will reduce the incentives of taxpayers and their advisors to "play the audit lottery."

Repeal of present-law penalties

The bill repeals the present-law penalties for negligence and fraud,[3] substantial understatements of liability,[4] valuation overstatements,[5] and valuation understatements for purposes of estate or gift taxes[6]. The bill also repeals the special negligence rules applicable to straddles[7] and to amounts shown on information returns.[8] The subcommittee believes that, by repealing the special rule applicable to information returns, the burdens on taxpayers will be reduced. Finally, the bill repeals the higher interest rate that applies to substantial underpayments that are attributable to tax-motivated transactions.[9]

Effective Date

The accuracy provisions of the bill generally apply to returns the due date for which (determined without regard to extensions) is after December 31, 1989.

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[3] Present-law section 6653. The portion of 6653 applicable to stamp taxes is retained.

[4] Present-law sec. 6661.

[5] Present-law secs. 6659 and 6659A.

[6] Present-law sec. 6660.

[7] Present-law sec. 6653(f).

[8] Present-law sec. 6653(g).

[9] Present-law sec. 6621(c).

C. Preparer, Promoter, and Protester Penalties (Title III of the bill, new sec. 6673 of the Code, and secs. 6672, 6694, 6695, 6700, 6701, 6702, 7216, and 7407 of the Code)

Present Law

Return preparer penalties

An income tax return preparer is subject to a penalty of $100 if any part of an understatement of tax on a return or claim for refund is due to the return preparer's negligent or intentional disregard of rules and regulations. In addition, an income tax return preparer is subject to a penalty of $500 if any part of an understatement of tax on a return or claim for refund is due to the return preparer's willful attempt in any manner to understate tax. An income tax return preparer is also subject to a penalty of $25 for each failure to (1) furnish a copy of a return or claim for refund to the taxpayer; (2) sign the return or claim for refund; or (3) furnish his or her identifying number.

Penalty for promoting abusive tax shelters

Any person who organizes, assists in the organization of, or participates in the sale of any interest in, a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, is subject to a penalty if in connection with such activity the person makes or furnishes a false or fraudulent statement or a gross valuation overstatement. The amount of the penalty equals the greater of $1,000 or 20 percent of the gross income derived or to be derived by the person from the activity. It is unclear under present law whether the term "activity" refers to each sale of an interest in a tax shelter or whether it refers to the overall activity of promoting an abusive tax shelter.

Penalty for aiding and abetting the understatement of tax liability

Any person who aids, assists in, procures, or advises with respect to the preparation or presentation of any portion of a return or other document under the tax laws which (1) the person knows will be used in connection with any material matter arising under the tax laws, and (2) the person knows will (if so used) result in an understatement of the tax liability of another person is subject to a penalty equal to $1,000 for each return or other document ($10,000 in the case of returns and documents relating to the tax of a corporation).

Frivolous income tax return penalty

Any individual who files a frivolous income tax return is subject to a penalty of $500.

Sanctions and costs awarded by courts

If it appears to the Tax Court that (1) proceedings before it have been instituted or maintained primarily for delay, (2) the taxpayer's position is frivolous, or (3) the taxpayer has unreasonably failed to pursue administrative remedies, the Court may award damages not to exceed $5,000 to the United States.

Authority to counterclaim for balance of penalty in partial refund suits

Taxpayers may pay a portion of the penalties for failure to collect and pay over tax, for understatement of a taxpayer's liability by an income tax return preparer, for promoting abusive tax shelters, and for aiding and abetting the understatement of tax liability. By doing so, they may obtain judicial review of the imposition of these penalties. Present law may prohibit the Federal Government from counterclaiming for the balance of the penalty in the same lawsuit.

Bonding requirement

Return preparers may post a bond, thereby preventing any proceeding by the Federal Government under section 7407 seeking to enjoin a return preparer from engaging in prohibited conduct.

Disclosure of certain information by return preparers

In general, return preparers are subject to penalty for disclosing tax return information that is furnished to the return preparer in connection with the preparation of tax returns. The IRS may by regulation provide exceptions to this general prohibition.

Explanation of Provisions

Return preparer penalties

The bill revises the present-law penalties that apply in the case of an understatement of tax that is caused by an income tax return preparer. First, the bill provides that if any part of an understatement of tax on a return or claim for refund is attributable to a position for which there was not a realistic possibility of being sustained on its merits and if any person who is an income tax return preparer with respect to such return or claim for refund knew (or reasonably should have known) of such position and such position was not disclosed or was frivolous, then that return preparer is subject to a penalty of $250. The penalty is not imposed if there is reasonable cause for the understatement and the return preparer acted in good faith. The subcommittee has adopted this new standard because it generally reflects the professional conduct standards applicable to lawyers and to certified public accountants. The subcommittee believes that this standard of behavior is stricter than present law, so that negligent behavior subject to penalty under present law will continue to be subject to penalty under this new standard.

The subcommittee intends that imposition of this penalty not lead to an automatic referral to the Internal Revenue Service Director of Practice. The subcommittee believes that the IRS should exercise discretion in referring the specific cases to the Director of Practice.

In addition, the bill provides that if any part of an understatement of tax on a return or claim for refund is attributable to a willful attempt by an income tax return preparer to understate the tax liability of another person or to any reckless or intentional disregard of rules or regulations by an income tax return preparer, then the income tax return preparer is subject to a penalty of $1,000. The subcommittee intends that rules parallel to those discussed above, which provide that specified disclosure tends to demonstrate that there was no intentional disregard of rules and regulations for purposes of the negligence penalty, also apply to this penalty.

The return preparer penalties that apply to each failure to (1) furnish a copy of a return or claim for refund to the taxpayer, (2) sign the return or claim for refund, (3) furnish his or her identifying number, and (4) file a correct information return, are made uniform. The penalty is $50 for each failure and the total penalties imposed for any single type of failure for any calendar year are limited to $25,000.

Penalty for promoting abusive tax shelters

Under the bill, the amount of the penalty imposed for promoting abusive tax shelters equals $1,000 (or, if the person establishes that it is less, 100 percent of the gross income derived or to be derived by the person from such activity). In calculating the amount of the penalty, the organizing of an entity, plan or arrangement and the sale of each interest in an entity, plan, or arrangement constitute separate activities. The subcommittee has made these modifications because the courts have differed in their interpretations of the provisions of present law. The subcommittee believes that its modifications will eliminate confusion for cases arising in the future. The bill also clarifies that the penalty applies to direct or indirect actions.

The subcommittee is concerned about the large number of old tax shelter cases that await resolution. The subcommittee recognizes that the Tax Court has, in the last several years, made significant progress in reducing its inventory of old tax shelter cases. The subcommittee expects the Tax Court as well as the IRS to redouble their efforts to resolve or encourage settlement of old tax shelter cases. The subcommittee realizes that delay is often caused by the litigants themselves. The subcommittee encourages the Tax Court to use every means within its disposal, including the sanctions on litigants and attorneys imposed under this bill, to encourage litigants to resolve their disputes as expeditiously as possible. Similarly, the subcommittee encourages the IRS to make every effort to resolve old tax shelter cases, through means such as additional settlement initiatives, better caseload management, and better utilization of the appeals process.

Penalty for aiding and abetting the understatement of tax liability

The bill amends the penalty for aiding and abetting the understatement of tax liability by imposing the penalty in cases where the person aids, assists in, procures, or advises with respect to the preparation or presentation of any portion of a return or other document if (1) the person knows or has reason to believe that the return or other document will be used in connection with any material matter arising under the tax laws, and (2) the person knows that if the portion of the return or other document were so used, an understatement of the tax liability of another person would result. In addition, the bill provides that a penalty for promoting abusive tax shelters is not to be imposed on any person with respect to any document if an aiding and abetting penalty is imposed on such person with respect to the same document. Both penalties may however be imposed with respect to separate documents, such as, for example, when a promoter furnishes promotional material at the time of sale and subsequently provides partnership schedules (Forms K-1) to the investors.

Frivolous income tax return penalty

The bill increases the penalty for filing frivolous income tax returns from $500 per return to $1,000 per return. The subcommittee increased the amount of the penalty because the rate of the penalty has not been adjusted in nine years, and a strengthened penalty is needed to help ensure the integrity of the self-assessment system. The subcommittee does so in light of the narrow scope that the courts have given to this penalty, which does not inappropriately burden taxpayers' expressions of their views.

In addition, the bill deletes the special provision in present law permitting taxpayers who contest the imposition of this penalty to pay 15 percent of the penalty, which halts further collection proceedings until final judicial resolution of the dispute. Thus, taxpayers who wish to contest imposition of this penalty must pay the full penalty before seeking judicial review of imposition of the penalty. The subcommittee believes that repealing this special 15-percent rule places taxpayers who contest this penalty by way of a refund action in the same position as taxpayers who contest the assertion that they owe additional tax to the IRS. By repealing this special rule, the bill makes suits for refund of this penalty permissible only under the generally applicable rules on suits for refunds. Suits contesting the imposition of this penalty may be brought only in the district courts and the Claims Court.

Sanctions and costs awarded by courts

The bill authorizes the Tax Court to impose a penalty not to exceed $25,000 if a taxpayer (1) institutes or maintains a proceeding primarily for delay, (2) takes a position that is frivolous, or (3) unreasonably fails to pursue available administrative remedies. The subcommittee intends that the increased penalty (above $5,000) apply primarily (but not exclusively) to tax shelter cases, where the $5,000 maximum provided under present law appears to be ineffective in deterring taxpayers from taking frivolous positions.

The subcommittee has explicitly chosen to call these awards "penalties", rather than "damages" (as under present law), so that it is clear that specific damages incurred by the United States need not be proved before the court may impose this penalty. The subcommittee believes that dealing with these frivolous lawsuits wastes scarce judicial resources and delays the resolution of legitimate disputes. The subcommittee expects that its modifications to this provision will further decrease frivolous lawsuits. The subcommittee also intends to monitor the use of this penalty to ensure that it continues to be used, as it has in the past, only in situations in which its use is appropriate. The subcommittee has also called these awards "penalties" rather than "damages" in the parallel provisions applicable to other courts. The subcommittee has provided that any monetary sanctions, penalties, or costs awarded in a tax case by one of these other courts may be assessed and collected in the same manner as a tax. This permits these sanctions, penalties, and costs, when awarded by one of these other courts, to be collected in the same manner as if they were awarded by the Tax Court.

The subcommittee has eliminated the last sentence from present law section 6673(a) (relating to assessment and payment) because, in light of the use of the term "penalty", the purpose of that last sentence is accomplished by section 6671(a). The subcommittee intends that no substantive modification be made to the assessment and payment procedures because of the deletion of this last sentence of section 6673(a).

The bill also authorizes the Tax Court to require any attorney or other person permitted to practice before the Court to pay excess costs, expenses, and attorney's fees that are incurred because the attorney or other person unreasonably and vexatiously multiplied any proceeding before the Court. If the attorney is appearing on behalf of the Commissioner of Internal Revenue, the United States is to pay these costs in the same manner as an award of these costs by a district court. This provision is comparable to the authority already provided to district courts under 28 U.S.C. section 1927.

Authority to counterclaim for balance of penalty in partial refund suits

The bill clarifies that, where taxpayers utilize the provisions of present law (other than with respect to frivolous income tax returns) that permit partial (rather than full) payment of certain penalties to obtain judicial review of the imposition of these penalties, the United States may counterclaim as part of the same lawsuit for the remainder of the penalty. Present law may prohibit a counterclaim of this nature; thus, an additional lawsuit must be brought even if the taxpayer loses the case brought after partial payment of the tax. The subcommittee believes that multiple court cases with respect to the same issue wastes scarce judicial resources. Consequently, the subcommittee permits all issues relating to these penalties to be considered in one lawsuit.

Repeal of bonding requirement

The bill repeals the provision permitting return preparers to post a bond and thereby prevent any proceeding by the Federal Government under section 7407 seeking to enjoin a return preparer from engaging in prohibited conduct. The subcommittee believes that return preparers should not be able to prevent judicial resolution of the issue of whether the return preparer has engaged in prohibited conduct.

Disclosure of certain information by return preparers

The bill provides that the IRS regulations relating to the use of tax information by return preparers are to be amended to provide that a return preparer may disclose tax information to another return preparer solely for purposes of quality or peer reviews. The purpose of this provision is to enable a return preparer to obtain the benefits of having another return preparer review the first preparer's work. The bill does not permit disclosure of this information by the IRS for these purposes.

Effective Dates

The modifications to the return preparer penalties apply to documents prepared after December 31, 1989. The modifications to the penalty for promoting abusive tax shelters and the aiding and abetting penalty apply to activities after December 31, 1989. The modification to the frivolous income tax return penalty applies to returns filed after December 31, 1989. The modifications to the court-awarded sanctions apply to proceedings pending on, or commenced after, December 31, 1989. The provision relating to counterclaims is effective on the date of enactment. The provision repealing the bonding requirement for return preparers is effective for actions or proceedings commenced after December 31, 1989. The provision relating to disclosures by return preparers is effective on the date of enactment.

D. Delinquency Penalties (Title IV of the bill, new sec. 6656 of the Code, and secs. 1463 and 6651 of the Code)

Present Law

Failure to file

A taxpayer who fails to file a tax return on a timely basis is subject to a penalty equal to 5 percent of the net amount of tax due for each month that the return is not filed, up to a maximum of 5 months or 25 percent. The net amount of tax due is the excess of the amount of the tax required to be shown on the return over the amount of any tax paid on or before the due date prescribed for the payment of tax.

Failure to make timely deposits of tax

If any person who is required to deposit taxes imposed by the Internal Revenue Code with a government depositary fails to deposit such taxes on or before the prescribed date, a penalty may be imposed equal to 10 percent of the amount of the underpayment, unless it is shown that such failure is due to reasonable cause and not willful neglect. The amount of the underpayment for this purpose is the excess of the amount of the tax required to be deposited over the amount of the tax, if any, deposited on or before the prescribed date.

Failure to withhold on income of foreign persons

As described above, persons having control, receipt, custody, disposal, or payment of certain types of U.S. income of foreign persons are required to deduct and withhold U.S. tax from such income under chapter 3 of the Code's income tax provisions (secs. 1441-1464). The amount withheld is credited against the U.S. tax liability of the foreign income recipient.

Where a tax on the U.S. income of a foreign recipient was required to be withheld but the withholding agent failed to do so, and instead the tax is paid by the income recipient, a penalty may be imposed on the recipient or the withholding agent for failure to pay the tax only if the failure was fraudulent and for the purpose of evading payment (sec. 1463). By contrast, where a U.S. employer fails to withhold income tax from an employee's wages but the employee pays the tax due, the employer remains liable for any penalties and additions to tax otherwise applicable (sec. 3402(d)).

Explanation of Provisions

Failure to file

The bill modifies present law by providing that the fraud and negligence penalties are not to apply in the case of a negligent or fraudulent failure to file a return. Instead, the bill provides that in the case of a fraudulent failure to file a return, the failure to file penalty is to be increased to 15 percent of the net amount of tax due for each month that the return is not filed, up to a maximum of 5 months or 75 percent. The burden of proof on the fraud element of this increased portion of the penalty is on the IRS (sec. 7454(a)). If the IRS does not sustain its burden, and if the IRS determined in the alternative in the notice of deficiency that the taxpayer is liable for the basic failure to file penalty under section 6651(a)(1), then the Court could consider the basic penalty and the burden of proof in respect thereof would be on the taxpayer. On the other hand, if the IRS does not sustain its burden on the fraud element and failed to make an alternative determination on the notice but did in its answer or other pleading assert that the taxpayer is liable for the basic penalty, then the Court could also consider that penalty but the burden of proof in respect thereof would be on the IRS. Finally, if the IRS does not sustain its burden on the fraud element and failed to either make an alternative determination in the notice or assert the basic penalty in its answer, the Court could not consider that penalty and the taxpayer would not be liable for any failure to file penalty.

The subcommittee has made this modification to improve the coordination of the failure to file penalty with the accuracy-related penalties. The subcommittee intends that the courts and the IRS should consider the same elements when considering the imposition of this new aspect of the penalty as is done under present law when considering imposition of the 6653 penalty where there has been a failure to file a return. Thus, the actions or behavior that trigger the penalty under the bill are to be the same as those under present law.

Failure to make timely deposits of tax

The bill also modifies the penalty for the failure to make timely deposits of tax in order to encourage depositors to correct their failures. The Subcommittee has established a four-tiered penalty structure in which the amount of the penalty varies with the length of time within which the taxpayer corrects the failure. Under the bill, a depositor is subject to a penalty equal to 2 percent of the amount of the underpayment if the failure is corrected on or before the date that is 5 days after the prescribed due date. A depositor is subject to a penalty equal to 5 percent of the amount of the underpayment if the failure is corrected after the date that is 5 days after the prescribed due date but on or before the date that is 15 days after the prescribed due date. A depositor is subject to a penalty equal to 10 percent of the amount of the underpayment if the failure is not corrected on or before the date that is 15 days after the due date. Finally, a depositor is subject to a penalty equal to 15 percent of the amount of the underpayment if the failure is not corrected before the IRS issues a notice and demand for the amount of the underpayment.

This penalty structure gives the taxpayer an incentive to correct any underpayments before the IRS discovers the underpayment and demands payment. The Subcommittee recognizes the importance of a penalty for failure to deposit taxes, since many of the taxes subject to this penalty are trust fund taxes (i.e., amount withheld from employee wages), held in trust by the depositor on behalf of the employee and the Federal government. The Subcommittee believes that the present-law 10-percent penalty applicable to all failures to deposit tax is too harsh in some circumstances and that depositors complying with the law on or before 15 days after the prescribed due date should pay a penalty significantly less than 10 percent (i.e., 2 percent or 5 percent). In contrast, the Subcommittee believes that those depositors who have not made required deposits and have caused the IRS to make a statutory notice and demand for payment should pay a more substantial penalty (i.e., 15 percent). As under present law, no penalty is to be imposed if the failure to make a timely deposit is due to reasonable cause and not willful neglect. The subcommittee intends that this penalty not apply in circumstances in which the estimated tax penalties (secs. 6654 and 6655) apply. The bill also repeals the present-law 25 percent penalty on overstated deposit claims.

Failure to withhold on income of foreign persons

The bill provides that in cases where a tax on the U.S. income of a foreign person was required to be withheld under chapter 3 but was not in fact withheld, and the person who would have been entitled to a credit for any withholding tax paid instead satisfies its own proper tax liability, the withholding agent remains liable for any penalties and additions to tax otherwise applicable for failure to withhold. Thus, under the bill these withholding agents are subject to the same general approach applicable to U.S. employers who withhold income taxes from employees' wages.

Effective Dates

The modification to the failure to file penalty applies to returns the due date for which (determined without regard to extensions) is after December 31, 1989. The modification to the penalty for the failure to make timely deposits of tax applies to deposits that are required to be made after December 31, 1989. The modification to the rules on liabilities of withholding agents applies to failures to deduct and withhold taxes after December 31, 1989.

ADMINISTRATIVE RECOMMENDATIONS

A. GENERAL ADMINISTRATIVE RECOMMENDATIONS

1. The IRS should develop a policy statement emphasizing that civil tax penalties exist for the purpose of encouraging voluntary compliance.

2. The IRS should develop a handbook on penalties for all employees. This handbook should be sufficiently detailed to serve as a practical guide for most issues of penalty administration.

3. The IRS should provide clear guidance to its employees on how to compute penalties. This guidance should be incorporated into the penalty handbook.

4. The IRS should revise existing training programs to reflect the purpose for penalties and their administration.

5. The IRS should examine its communications with taxpayers to determine whether these communications do the best possible job of explaining to taxpayers why they received the penalty and how they can avoid the penalty in the future. These communications include penalty notices and publications. Penalty notices should also provide the telephone number of contact offices which taxpayers may call with questions and which have the authority to address disputed penalties.

6. The IRS should finalize its review and analysis of the quality and clarity of machine-generated letters and notices used in the Adjustments and Correspondence Branches of the IRS service centers and report to Congress by July 1, 1990.

7. The IRS should consider ways to develop better information concerning the administration and effects of penalties. The IRS should develop a master file database to provide statistical information regarding the administration of penalties. The IRS should continuously review information for the purpose of suggesting changes in compliance programs, educational programs, penalty design and penalty administration.

8. In the application of penalties, the IRS should make a correct substantive decision in the first instance rather than mechanically assert penalties with the idea that they will be corrected later.

B. INFORMATION REPORTING PENALTIES

1. The Internal Revenue Service should adopt a clear policy of working with the third party payor community to assure accurate and timely filing of information, in a format that is usable by the IRS and the taxpayer without unduly burdening the third-party that is required to provide this information.

2. The IRS should maintain an ongoing effort to develop, monitor, and revise programs designed to assist taxpayers in complying with legal requirements and avoiding penalties. The IRS should develop a publication for every business, exempt organization, and governmental unit enumerating all information reporting requirements, sanctions for noncompliance, whom to call with questions, and where to file. The IRS should also provide speakers on information reporting to industry meetings and programs.

3. The IRS should consider the creation of an advisory group comprised of representatives from the payor community and practitioners interested in the information reporting program that meets on a regular basis to discuss improvements to the system. This advisory group would be useful to discuss problems, the feasibility of complying with or the economic impact of rules and regulations affecting the reporting industry.

4. The Information Returns Master File (IRMF) should be managed under the jurisdiction of a single function within the IRS. This function should have responsibility not only for the magnetic media filing program and the processing of data to the IRMF, but also for penalty assertion and abatement programs in this area, processing paper documents, payor education programs, and examination and other compliance programs. This function should also have operational responsibility for the issuance of regulations and ruling.

5. Penalty case work in the information reporting area, including administrative appeals, should be centralized and the procedures for handling the abatement of information reporting penalties should be streamlined.

6. The IRS should better use its limited enforcement resources to ensure that taxpayers who continually fail to comply with the reporting requirements are identified and penalized, rather than focusing only on taxpayers who are working with the IRS in an attempt to comply with the law.

7. The IRS must provide to a taxpayer upon request, or to a financial institution with the taxpayer's authorization, within 30 days, a list of the names the IRS has (in its computer matching program file) under the taxpayer's identification number. This information could be used by the taxpayer to reconcile or determine the reason for any mismatches between the information the taxpayer has supplied a financial institution, between the information the financial institution has supplied to the IRS, and the information the IRS has in its master file.

C. PREPARER, PROMOTER, AND PROTESTOR PENALTIES

1. Disciplinary sanctions by the Director of Practice should not be viewed as a adjunct to the civil tax penalty system as it applies to tax return preparers. In matter involving non-willful conduct, the IRS should only refer cases to the Director of Practice in instances where the IRS can establish a pattern of failing to meet the required standards. An isolated instance in which a penalty may apply should not, in and of itself, require a referral unless willful conduct is involved.

2. The Department of the Treasury should issue regulations related to the IRC section 6700 penalty for promoting abusive tax shelters and the section 6701 penalty for aiding and betting understatement of tax liability to the extent these provisions may apply to activities which could be subject to the section 6694 and 6695 tax return preparer penalties. Guidance on these matters should be issued in a timely fashion.

3. The IRS should instruct its employees that they cannot threaten the use of preparer penalties during an examination, Appeals conference, or other proceedings involving a tax advisor.

4. The Director of Practice should publish more information about the basis for being disciplined and warnings in appropriate cases. Questions and Answers prepared in conjunction with input from practitioners would be helpful to the tax practitioner community.

Access to Tax Information by the Veterans' Administration

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information of taxpayers, with exceptions for authorized disclosure to certain Governmental entities in certain enumerated instances (Code sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431).

Among the disclosures permitted under the Code is disclosure of return information to Federal, State, and local agencies administering certain programs under the Social Security Act or the Food Stamp Act of 1977. This disclosure, pursuant to a written request by the agency, is for the purpose of determining eligibility for, and the correct amount of benefits under, certain enumerated programs. Any authorized recipient of return information must maintain a system of safeguards to protect against unauthorized redisclosure of the information.

Explanation of Administration's Proposal

The proposal would allow disclosure of certain tax return information to the Veterans' Administration to assist it in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension and other programs. Thus, the Veterans' Administration would have direct access to information on the types and amounts of income received by veterans.

The Veterans' Administration would be required to comply with the safeguards presently contained in the Code and in section 1137(c) of the social Security Act (governing the use of disclosed tax information). These safeguards include independent verification of tax data, notification to the individual concerned, and the opportunity to contest agency findings based on such information.

The proposal would be effective on the date of enactment.

Possible Option

The possible option would permit the Veterans' Administration to obtain information by providing the IRS with a list of the recipients of benefits and the income criteria for eligibility for those benefits. The IRS would then disclose to the Veterans' Administration only whether or not the recipient had income above the eligibility ceiling for benefits. Under the possible option, less information would be disclosed to the Veterans' Administration than under the Administration's proposal. The same safeguards would apply as under the Administration's proposal.

SUBCOMMITTEE ON TRADE

H.R. 2443, TRADE AGENCY AUTHORIZATIONS FOR FISCAL YEAR 1990

U.S. INTERNATIONAL TRADE COMMISSION

CURRENT LAW: No authorization for FY 1989. P.L. 100-459 appropriated $35,958,000 for FY 1989.

PROPOSAL: Authorizes appropriations of $39,943,000 for FY 1990, of which not more than $2,500 may be used for entertainment expenses.

EFFECTIVE DATE: Date of enactment

U.S. CUSTOMS SERVICE

Authorization of Appropriations

CURRENT LAW: The Anti-Drug Abuse Act of 1989 (P.L. 100-690) authorized FY 1989 appropriations: $444,504,000 for noncommercial operations; $615,247,000 for commercial operations; $142,262,000 for Air Operations and Maintenance, plus $57,400,000 one time for procurement and operations of interdiction aircraft; $20 million for the Customs Forfeiture Fund for discretionary purposes and permanentt authorization for nondiscretionary costs of processing forfeitures. An additional $11.1 million was authorized for Customs drug enforcement.

PROPOSAL: Authorizes appropriations for FY 1990: Not to exceed $418,822,000 for noncommercial operations; not less than $656,468,000 for commercial operations; not to exceed $128,128,000 for Air Operations and Maintenance; not to exceed $10 million for discretionary purposes of Customs Forfeiture Fund.

Appointment of Commissioner of Customs

CURRENT LAW: The Commissioner of Customs is appointed by the Secretary of the Treasury without the advice and consent of the Senate.

PROPOSAL: The Commissioner of Customs shall be appointed by the President, subject to Senate confirmation, and shall be the head of the U.S. Customs Service. The Commissioner is further directed to carry out the duties and powers prescribed by the Secretary of the Treasury and shall report to the Secretary through such other officials as may be designated by the Secretary.

Customs Forfeiture Fund

CURRENT LAW: Section 7364 of P.L 100-640 requires an annual report to the Congress by the Commissioner of Customs on the financial and management status of the Customs Forfeiture Fund.

PROPOSAL: Requires additional reporting and accounting of the on-hand inventory of assets, gross receipts and disbursements from the Fund, and an income and expense statement for each class of seized property.

Administrative Processing of Money Seized Under Customs Laws

CURRENT LAW: 19 U.S.C. 1607(a) requires that all cash seizure cases over $100,000 in value must be forfeited under a judicial process, rather than through a Customs administrative process.

PROPOSAL: Eliminates the requirement for judicial processing of uncontested seizure cases over the $100,000 limit. Requires a report to the Congress on the total dollar value of uncontested seizures of monetary instruments over $100,000 that have not been deposited into the Customs Forfeiture Fund.

Disposition of Forfeited Property

CURRENT LAW: Section 616(c)(1)(B) of the Tariff Act of 1930 authorizes the Customs Service to transfer forfeited property to other Federal agencies and State and local law enforcement agencies that participated directly or indirectly in the seizure forfeiture of the property.

PROPOSAL: Authorizes the sharing of forfeited property with the Civil Air Patrol (CAP) in support of CAP missions, including search and rescue and drug surveillance missions. The transfer of jet-powered aircraft is prohibited.

EFFECTIVE DATES: All proposals on date of enactment. A transition provision specifies that the individual serving on the day before date of enactment may continue to serve until a new Commissioner takes office pursuant to the new appointment process.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

CURRENT LAW: No authorization for FY 1989. P.L. 100-459 appropriated $15,229,000 for FY 1989, of which not to exceed $69,000 is available for representation expenses and $1,000,000 shall remain available until expended.

PROPOSAL: Authorizes appropriations of $21,143,000 for FY 1990, of which not to exceed $89,000 is available for representation expenses and $1,000,000 shall remain available until expended.

EFFECTIVE DATE: Date of enactment

H.R. 2628, "CUSTOMS USER FEES AMENDMENTS ACT OF 1989"
(reported by the Subcommittee on Trade, June 15, 1989)

CURRENT LAW:

Section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended in 1986 and 1987, requires the Secretary of the Treasury to collect a customs user fee from the importer of record to cover the costs of processing dutiable or duty-free merchandise formally entered or withdrawn from warehouse for consumption. The fee authority terminates on September 30, 1990.

The current fee level to provide revenue equal to total appropriations for U.S. Customs Service commercial operations is 0.17 percent ad valorem. Products of beneficiary countries under the Caribbean Basin Initiative, of U.S. insular possessions, and of least developed developing countries, and entries under chapter 98 of the tariff schedules are exempt from the fee. The U.S.-Canada Free-Trade Agreement also requires phase out and elimination of the fee on goods of Canadian origin beginning on January 1, 1990.

PROPOSAL:

In February 1988 the Contracting Parties to the General Agreement on Tariffs and Trade (GATT) adopted a panel finding that the present ad valorem user fee is inconsistent with U.S. international obligations under the GATT. H.R. 2628 provides a revised user fee authority that addresses the issues raised by the GATT ruling as a one-year interim measure pending a six-month study by the General Accounting Office of the costs of Customs commercial operations.

For fiscal year 1990, the user fee on any formal entry will be 0.17 percent ad valorem or $575, whichever is less, subject to adjustment to appropriations levels. The cost of commercial operations on which the fee level is based will exclude air passenger processing costs, export control costs, and costs of international affairs activities. The exemptions from fee application under current law will continue, but the costs of processing such entries will be funded from general revenues rather than from user fees on other entries. Based on the study results, the Subcommittee expects to work with the Administration and the private sector to develop a more permanent solution to the issue.

H.R. 2628 also exempts products of Israel from the existing and interim fee if the U.S. Trade Representative determines that Israel has provided reciprocal concessions in return. The bill provides the Customs Service authority to enforce collection of user fees, and to accept reimbursement for services at foreign trade zones near small airports. H.R. 2628 extends the customs user fee authority under present law for one year until September 30, 1991.

EFFECTIVE DATE: October 1, 1989

MISCELLANEOUS TARIFF AND CUSTOMS PROVISIONS

Duty Suspension Bills

1. Bendiocarb
(H.R. 653; Mr. Vander Jagt)

CURRENT LAW

Imports of this insecticide enter under HTS subheading 2932.90.10, with a col. 1 rate of 6.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 2932.90.10 through December 31, 1992.

2. Magnetic video tapes
(H.R. 698; Mr. Matsui)

CURRENT LAW

Imports of pre-recorded magnetic videotapes enter under HTS subheading 8524.23.10, with a col. 1 rate of $0.0066 per linear meter (yielding $1.60 per "standard" cassette). Duties on these items had been suspended entirely under terms of the Nairobi Protocol between 1983 and 1987.

PROPOSAL

Suspends duty on magnetic videotape recordings of a width exceeding 6.5 millimeters, but not exceeding 16 millimeters, in cassettes of U.S. origin, valued at not over $7.00 per cassette; provided for in item 8524.23.10, through December 31, 1992. Retroactive to January 1, 1988.

3. Tamoxifen citrate
(H.R. 731; Mr. Guarini)

CURRENT LAW

Imports of this antiestrogen enter under HTS subheading 2922.19.10, with a col. 1 rate of 6.6 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 2922.19.10 through December 31, 1992.

4. Methyl and ethyl parathion
(H.R. 732; Mr. Guarini)

CURRENT LAW

Imports of these insecticides enter under HTS subheading 2920.10.20, with a col. 1 rate of 12.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rates for item 2920.10.20 through December 31, 1992.

5. Calcium carbaspirin
(H.R. 914; Mr. Smith of Florida)

CURRENT LAW

Imports of calcium carbaspirin enter under HTS subheading 9918.22.50, with a col. 1 rate of 6.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 9918.22.50 through December 31, 1992.

6. Unspun fibrous vegetable material
(H.R. 1184; Mr. Andrews)

CURRENT LAW

Imports of furniture made of this material enter under HTS subheadings 9401.50.00, 9401.90.25, 9403.80.30 and 9403.90.25, with a col. 1 rate of 7.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for furniture, seats and parts produced from this material through December 31, 1992.

7. Iohexol
(H.R. 1196; Mr. Ford of Tennessee)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2924.29.40, with a col. 1 rate of 13.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 2924.29.40 through September 30, 1990.

8. TFM Aniline
(H.R. 1442; Mr. McMillan of North Carolina)

CURRENT LAW

Imports of TFM Aniline enter under HTS subheading 2921.14.50 with a col. 1 rate of duty of 2.4 cents per kilogram plus 18.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for TFM Aniline item 2921.14.50 through December 31, 1992.

9. Pentachlorobenzenethiol
(H.R. 1445; Mr. Ravenel)

CURRENT LAW

Imports of Pentachlorobenzenethiol enter under HTS subheading 2930.90.20, with a col. 1 rate of 6.7 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 2930.90.20 through December 31, 1992.

10. Paramine acid
(H.R. 1446; Mr. Ravenel)

CURRENT LAW

Imports of Paramine acid enter under HTS subheading 2921.59.50, with a col. 1 rate of 2.4 cents per kilogram plus 18.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 3921.59.50 through December 31, 1992.

11. Trimethyl base
(H.R. 1447; Mr. Ravenel)

CURRENT LAW

Imports of this chemical, also known as Fischer's base, enter under HTS subheading 2933.90.39, with a col. 1 rate of 3.7 cents per kilogram plus 16.2 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 2933.90.39 through December 31, 1992.

12. Diphenyldichlorosilane and phenyltrichlorosilane
(H.R. 1482; Mr. Vander Jagt)

CURRENT LAW

Imports of both of these chemicals enter under HTS subheading 2931.00.40, with a col. 1 rate of 6.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 2931.00.40 through December 31, 1992.

13. Sulfachloropyridazine
(H.R. 1537; Mr. Nagle)

CURRENT LAW

Imports of sulfachloropyridazine enter under HTS subheading 2935.00.39, with a col. 1 rate of 10.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 2935.00.39 through December 31, 1992.

14. Certain bicycle parts
(H.R. 1571 and H.R. 1855; Mr. McEwen)

CURRENT LAW

Imports of bicycle parts enter under HTS heading 8714 with col. 1 rate of duty from 4.6 percent ad valorem to 10 percent ad valorem; duties on some parts currently suspended through December 31, 1990.

PROPOSAL

Renews current duty suspensions on certain bicycle parts, and grants suspensions on other parts, all through December 31, 1992. The Subcommittee voted to combine these two bills and include additional technical changes.

15. Diphenolic acid
(H.R. 1657; Mr. Jenkins)

CURRENT LAW

Imports of this synthetic organic chemical enter under HTS subheading 2918.29.50, with a col. 1 rate of 13.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for Diphenolic acid through December 31, 1992.

16. Levodopa
(H.R. 1695; Mr. Guarini)

CURRENT LAW

Imports of this product enter under HTS subheading 2922.50.25, with a col. 1 rate of 8.7 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 2922.50.25 through December 31, 1992.

17. Diflunisal
(H.R. 1696; Mr. Guarini)

CURRENT LAW

Imports of Diflunisal enter under HTS subheading 2918.29.40 with a col. 1 rate of 13.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 2918.29.40 through December 31, 1992.

18. ADC-6
(H.R. 1697; Mr. Guarini)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2922.50.50 with a col. 1 rate of 7.9 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for ADC-6, item 2922.50.50, through December 31, 1992.

19. N-methylaniline and m-chloroaniline
(H.R. 1724; Mr. Clinger)

CURRENT LAW

Imports of these chemicals enter under HTS subheadings 2921.42.20 and 2921.49.50, with col. 1 rates of 5.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rates for these chemicals through December 31, 1992.

20. Naphthalic acid anhydride
(H.R. 1726; Mr. Clinger)

CURRENT LAW

Imports of Naphthalic acid anhydride enter under HTS subheading 2917.39.10, with a col. 1 rate of 6.9 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty imposed on item 2917.39.10, through December 31, 1992.

21. Molten-salt-cooled acrylic acid reactors and their associated parts, accessories, and equipment
(H.R. 1738; Mr. Schulze)

CURRENT LAW

Imports of these products enter under HTS subheadings 8419.89.50, 8419.90.30, or 8419.90.90, with col. 1 rates of 4.2 percent ad valorem.

PROPOSAL

Suspends the col. 1 rates for these products entered on or before December 31, 1992.

22. Certain glass bulbs
(H.R. 1749; Mr. Crane)

CURRENT LAW

Imports of glass bulbs enter under HTS subheading 7011.20.00 with a col. 1 rate of duty of 6.6 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for certain glass bulbs through December 31, 1992.

23. Certain aluminum luggage frames
(H.R. 1766; Mr. Miller of Washington)

CURRENT LAW

Imports of aluminum luggage frames enter under HTS subheading 7616.90.00 with a col. 1 rate of duty of 5.7 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for certain luggage frames of aluminum through December 31, 1992.

24. Carfentanil citrate
(H.R. 1770; Mr. Brown of Colorado)

CURRENT LAW

Imports of carfentanil citrate enter under HTS subheading 3004.90.60 with a col. 1 rate of duty of 6.3 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for carfentanil citrate through December 31, 1992.

25. In-line roller skate boots
(H.R. 1777; Mr. Frenzel)

CURRENT LAW

Imports of boots for use in in-line roller skates enter under HTS subheading 6402.19.10 with a col. 1 rate of duty of 6 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for item 6402.19.10 through December 31, 1992. No retroactive provision.

26. D Salt
(H.R. 1789; Ms. Schneider)

CURRENT LAW

Imports of D Salt enter under HTS subheading 2921.42.50 with a col. 1 rate of duty of 2.4 cents per kilogram plus 18.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for D Salt through December 31, 1992.

27. Anis base
(H.R. 1790; Ms. Schneider)

CURRENT LAW

Imports of Anis base enter under HTS subheadings 2921.49.30 or 2924.29.25 with a col. 1 rate of duty of 12.5 percent ad valorem in both cases.

PROPOSAL

Suspends the col. 1 rate of duty for items 2921.49.30 and 2924.29.25 through December 31, 1992.

28. Theobromine
(H.R. 1792; Ms. Schneider)

CURRENT LAW

Imports of theobromine enter under HTS subheadings 2929.90.50 or 2939.90.10 with a col. 1 rate of duty of 3.7 percent ad valorem, or 1.8 percent ad valorem, respectively.

PROPOSAL

Suspends the col. 1 rate of duty on theobromine through December 31, 1992.

29. Chlorhexanone
(H.R. 1793; Ms. Schneider)

CURRENT LAW

Imports of chlorhexanone enter under HTS subheading 2914.70.50 with a col. 1 rate of duty of 4 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for item 2914.70.50 through December 31, 1992.

30. Broenner's acid
(H.R. 1794; Ms. Schneider)

CURRENT LAW

Imports of Broenner's acid enter under HTS subheading 2921.42.50 with a col. 1 rate of duty of 2.4 cents per kilogram plus 18.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for Broenner's acid through December 31, 1992.

31. Neville and Winter's acid
(H.R. 1795; Ms. Schneider)

CURRENT LAW

Imports of Neville and Winter's acid enter under HTS subheading 2908.20.10 with a col. 1 rate of duty of 6.4 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for item 2908.20.10 through December 31, 1992.

32. Teicoplanin
(H.R. 1814; Mr. Gradison)

CURRENT LAW

Imports of Teicoplanin enter under HTS subheading 3004.20.00 with a col. 1 rate of duty of 3.7 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for Teicoplanin through December 31, 1992.

33. Ornithine
(H.R. 1815; Mr. Gradison)

CURRENT LAW

Imports of Ornithine enter under HTS subheading 2922.49.50 with a col. 1 rate of duty of 3.7 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for item 2922.49.50 through December 31, 1992.

34. Chemical light activator blend
(H.R. 1817; Mr. McMillan of North Carolina)

CURRENT LAW

Imports of the chemical mixture enter under HTS subheading 2917.12.20 with a col. 1 rate of duty 0.2 cents per kilogram plus 17.7 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for chemical light activator blend, a peroxide of polycarboxylic acid treated as a plasticizer, through December 31, 1992.

35. 2,4-Diamino-6-phenyl-1,3,5-triazine
(H.R. 1818; Mr. Morrison of Connecticut)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2933.90.39 with a col. 1 rate of duty of 3.7 cents per kilogram plus 16.2 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for 2,4-Diamino-6-phenyl-1,3,5-triazine through December 31, 1992.

36. Anthraquinone (AQ)
(H.R. 1822; Mr. Ravenel)

CURRENT LAW

Imports of AQ enter under HTS subheading 2914.61.00 with a col. 1 rate of duty of 11 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for anthraquinone (AQ) through December 31, 1992.

37. Certain infant nursery monitors and intercoms
(H.R. 1837; Mr. Skaggs)

CURRENT LAW

Imports of infant nursery monitors and intercoms enter under HTS subheadings 8525.10.60, 8527.39.00, and 8525.20.20 with col. 1 rates of duty of 2 - 6 percent ad valorem.

PROPOSAL

Suspends the col. 1 rates of duty for infant nursery monitors and intercoms through December 31, 1992.

38. Certain Christmas Ornaments
(H.R. 1850; Mr. Frenzel)

CURRENT LAW

Imports of certain Christmas ornaments enter under HTS subheading 9505.10.25 with a col. 1 rate of duty of 5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for certain Christmas ornaments through December 31, 1992.

39. Ciprofloxacin Hydrochloride
(H.R. 1857; Mr. Morrison of Connecticut)

CURRENT LAW

Imports of Ciprofloxacin Hydrochloride enter under HTS subheading 2933.59.57 with a col. 1 rate of duty of 8.1 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for Ciprofloxacin Hydrochloride through December 31, 1992.

40. MDBS and HPBA
(H.R. 1858; Mrs. Patterson)

CURRENT LAW

Imports of chemicals MDBS and HPBA enter under HTS subheadings 2932.90.41 and 2906.19.00 with col. 1 rates of duty 13.5 percent ad valorem and 7.1 percent ad valorem, respectively.

PROPOSAL

Suspends the col. 1 rates of duty for DMBS and HPBA through December 31, 1991, unless terminated earlier by the Department of Commerce.

41. Thiothiamine hydrochloride
(H.R. 1859; Mr. Rose)

CURRENT LAW

Imports of thiothiamine hydrochloride enter under HTS subheading 2934.10.10 with a col. 1 rate of duty of 13.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for item 2934.10.10 through December 31, 1992.

42. Certain speciality thermoset resin
(H.R. 1868; Mr. Andrews)

CURRENT LAW

Imports of this specialty thermoset resin enter under HTS subheading 3911.90.30 with a col. 1 rate of duty of 5.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for certain specialty thermoset resin through December 31, 1992.

43. Quizalofop-ethyl
(H.R. 1884; Mr. Carper)

CURRENT LAW

Imports of quizalofop-ethyl enter under HTS subheading 2924.21.50 with a col. 1 rate of duty of 7.9 percent ad valorem.

PROPOSAL

Suspends the duty on quizalofop-ethyl through December 31, 1992.

44. Tefluthrin
(H.R. 1885; Mr. Carper)

CURRENT LAW

Imports of tefluthrin enter under HTS subheading 2934.90.16 with a col. 1 rate of duty of 12.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for tefluthrin through December 31, 1992.

45. L-alanyl L-proline (Ala Pro)
(H.R. 1887; Mr. Coughlin)

CURRENT LAW

Imports of L-alanyl L-proline enter under HTS subheading 2933.90.50 with a col. 1 rate of duty of 7.9 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for Ala Pro through December 31, 1992.

46. Mono- and dibenzyl toluenes
(H.R. 1888; Mr. Courter)

CURRENT LAW

Imports of mono- and dibenzyl toluenes enter under HTS subheading 3823.90.29 with a col. 1 rate of duty of 3.7 cents per kilogram plus 13.6 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for item 3823.90.29 through December 31, 1992.

47. Hexychlorobutadiene
(H.R. 1889; Mr. Courter)

CURRENT LAW

Imports of hexychlorobutadiene enter under HTS subheading 2903.29.00 with a col. 1 rate of duty 18 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for hexychlorobutadiene through December 31, 1992.

48. 2,2,6,6-Tetramethyl-4-piperidinon and amino hydroxy- and imido derivatives
(H.R. 1890; Mr. Courter)

CURRENT LAW

Imports of these chemicals enter under HTS subheading 2933.39.47 with a col. 1 rate of duty of 13.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for item 2933.39.47 through December 31, 1992.

49. p-Toluic acid
(H.R. 1891; Mr. Courter)

CURRENT LAW

Imports of p-Toluic acid enter under HTS subheading 2916.39.50 with a col. 1 rate of duty of 3.7 cents per kilogram plus 17.9 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate off duty for p-Toluic acid through December 31, 1992.

50. Tertiary-Butylchloride
(H.R. 1892; Mr. Courter)

CURRENT LAW

Imports of Tertiary-Butylchloride enter under HTS subheading 2903.19.50 with a col. 1 rate of duty of 18 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for Butylchloride through December 31, 1992.

51. Hexychloride
(H.R. 1893; Mr. Courter)

CURRENT LAW

Imports of hexychloride enter under HTS subheading 2903.19.50 with a col. 1 rate of duty of 18 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for hexychloride through December 31, 1992.

52. Parts of generators for use on aircraft
(H.R. 1894; Mr. Crane)

CURRENT LAW

Imports of parts of generators for aircraft enter under HTS subheading 8503.00.60 with a col. 1 rate of duty of 3 percent ad valorem; certain parts enter free of duty under the Civil Aircraft Agreement.

PROPOSAL

Suspends the col. 1 rates of duty for parts of generators for use on aircraft through December 31, 1992.

53. Amiloride hydrochloride
(H.R. 1904; Mr. Dwyer of New Jersey)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2934.90.25 with a col. 1 rate of duty of 6.9 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for amiloride hydrochloride through December 31, 1992.

54. D-carboxamide
(H.R. 1905; Mr. Dwyer of New Jersey)

CURRENT LAW

Imports on D-carboxamide enter under HTS subheading 2924.21.50 with a col. 1 rate of duty of 7.9 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for D-carboxamide, through December 31, 1992.

55. Norfloxacin
(H.R. 1906; Mr. Dwyer of New Jersey)

CURRENT LAW

Imports of Norfloxacin enter under HTS subheading 2933.59.27 with a col. 1 rate of duty of 8.1 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for Norfloxacin through December 31, 1992.

56. Iopamidol
(H.R. 1907; Mr. Dwyer of New Jersey)

CURRENT LAW

Imports of Iopamidol enter under HTS subheading 2924.29.40 with a col. 1 rate of duty of 13.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for Iopamidol through September 30, 1990.

57. (6R-(6a,7B(Z)))-7-(((2-Amino-4-thiazolyl) ((carboxymethoxy)imino)acetyl)amino)-3-ethenyl-8-oxo-5-thia-1-azabicyclo (4.2.0)oct-2-ene-2-carboxylic acid
(H.R. 1910; Mr. Gilman)

CURRENT LAW

Imports of a chemical treated as an antibiotic for tariff purposes enter under HTS subheading 2941.90.50 with a col. 1 rate of 3.7 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for this chemical through December 31, 1992.

58. 7-Acetyl-1,1,3,4,4,6-hexamethyltetrahydronaphthalene
(H.R. 1911; Mr. Gilman)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2914.30.00 with a col. 1 rate of duty of 11.9 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for this chemical through December 31, 1992.

59. N-(4-(((2-Amino-5-formyl-1,4,5,6,7,8-hexahydro-4-oxo-6-pteridinyl)methyl)amino)benzoyl)-L-glutomic acid

(H.R. 1912; Mr. Gilman)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2933.90.36 with a col. 1 rate of duty of 6.9 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for item 2933.90.36 through December 31, 1992.

60. Mercuric oxide

(H.R. 1914; Mr. Grandy)

CURRENT LAW

Imports of Mercuric oxide enter under HTS subheading 2825.90.60 with a col. 1 rate of duty of 3.7 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for battery grade Mercuric oxide through December 31, 1992.

61. 2-Ethylanthraquinone

(H.R. 1923; Mr. Holloway)

CURRENT LAW

Imports of 2-Ethylanthraquinone enter under HTS subheading 2914.69.50 with a col. 1 rate of duty of 11 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for 2-Ethylanthraquinone through December 31, 1992.

62. N-[[4-chlorophenyl)amino] carbonyl]-2,6-diflourobenzamide

(H.R. 1926; Mrs. Johnson of Connecticut)

CURRENT LAW

Imports of these chemicals enter under HTS subheadings 2929.90.10 and 3808.10.20 with col. 1 rates of duty of 13.5 percent and 1.8 cents per kilogram plus 9.7 percent ad valorem, respectively.

PROPOSAL

Suspends the col. 1 rate of duty for these chemicals through December 31, 1992.

63. 2,6-dichlorobenzonitrile
(H.R. 1927; Mrs. Johnson of Connecticut)

CURRENT LAW

Imports of these chemicals enter under HTS subheading 2926.90.10 with a col. 1 rate of duty of 6.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for 2,6-dichlorobenzonitrile through December 31, 1992.

64. Certain machined electronic connector contact parts
(H.R. 1934; Mr. Levine of California)

CURRENT LAW

Imports of machined electronic connector contact parts enter under HTS subheading 8538.90.00 with a col. 1 rate of duty of 5.3 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for certain machined electronic connector contact parts through December 31, 1992.

65. MBEP
(H.R. 1943; Mr. Mollohan)

CURRENT LAW

Imports of Mono-butyl-para-ethyl phenol (MBEP) enter under HTS subheading 2907.19.50 with a col. 1 rate of duty of 7.2 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for MBEP through December 31, 1992.

66. BPIP
(H.R. 1944; Mr. Mollohan)

CURRENT LAW

Imports of Hexamethylene-bis-Triacetone-Diamine enter under HTS subheading 2933.39.47 with a col. 1 rate of duty of 13.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for BPIP through December 31, 1992.

67. Herbicide intermediate
(H.R. 1954; Mr. Rose)

CURRENT LAW

Imports of a herbicide intermediate enter under HTS subheading 2934.90.14 with a col. 1 rate of duty of 13.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for this herbicide intermediate through December 31, 1992.

68. K-Acid
(H.R. 1956; Ms. Schneider)

CURRENT LAW

Imports of K-Acid enter under HTS subheading 2922.21.50 with a col. 1 rate of duty of 3.7 cents per kilogram plus 15.6 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for K-Acid through December 31, 1992.

69. Ceftazidime Tertiary Butyl Ester
(H.R. 1958; Mr. Schulze)

CURRENT LAW

Imports of Ceftazidime Tertiary Butyl Ester enter under HTS subheading 2934.10.10 with a col. 1 rate of duty of 13.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for item 2934.10.10 through December 31, 1992.

70. 4 amino acetanilide
(H.R. 1959; Mr. Schulze)

CURRENT LAW

Imports of 4 amino acetanilide enter under HTS subheading 2924.29.45 with a col. 1 rate of 3.7 cents per kilogram plus 18.1 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for item 2924.29.45 through December 31, 1992.

71. 6 amino-2-naphthene sulfonic acid
(H.R. 1960; Mr. Schulze)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2921.45.50 with a col. 1 rate of 2.4 cents per kilogram plus 18.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for 6 amino-2 naphthene sulfonic acid through December 31, 1992.

72. 8 amino-2 naphthene sulfonic acid
(H.R. 1961; Mr. Schulze)

CURRENT LAW

Imports of the product enter under HTS subheading 2921.45.50 with a col. 1 rate of duty of 2.4 cents per kilogram plus 18.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for this product through December 31, 1992.

73. 5 (and 8) amino-2 naphthalene sulfonic acid
(H.R. 1962; Mr. Schulze)

CURRENT LAW

Imports of the chemical enter under HTS subheading 2921.45.30 with a col. 1 rate of duty of 13.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for item 2921.45.30 through December 31, 1992.

74. 5 amino 2 naphthalene sulfonic acid
(H.R. 1963; Mr. Schulze)

CURRENT LAW

Imports of this acid enter under HTS subheading 2921.45.10 with a col. 1 rate of duty of 6.9 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for 5 amino 2 naphthalene sulfonic acid through December 31, 1992.

75. 1-naphthylamine
(H.R. 1964; Mr. Schulze)

CURRENT LAW

Imports of 1-naphthylamine enter under HTS subheading 2921.45.50 with a col. 1 rate of duty of 2.4 cents per kilogram plus 18.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for item 2921.45.50 through December 31, 1992.

76. 4-amino-1-naphthalene sulfonic acid, sodium salt
(H.R. 1965; Mr. Schulze)

CURRENT LAW

Imports of this acid sodium salt enter under HTS subheading 2921.45.20 with a col. 1 rate of duty of 5.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for this acid sodium salt through December 31, 1992.

77. 1,4 dihydroxyanthraquinone
(H.R. 1966; Mr. Schulze)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2914.69.50 with a col. 1 rate of duty of 11 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for 1,4 dihydroxyanthraquinone through December 31, 1992.

78. 7 Nitro naphth [1,2] oxadiazole 5-sulfonic
(H.R. 1967; Mr. Schulze)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2934.90.06 with a col. 1 rate of duty of 7.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for this chemical through December 31, 1992.

79. 4-chloro-a-a-a-trifluoro-o-toluidine
(H.R. 1968; Mr. Schulze)

CURRENT LAW

Imports of this product enter under HTS subheading 2921.43.10 with a col. 1 rate of duty of 5.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for item 2921.43.10 through December 31, 1992.

80. 7-amino-1,3-naphthalene sulfonic acid mono potassium salt
(H.R. 1969; Mr. Schulze)

CURRENT LAW

Imports of the chemical enter under HTS subheading 2921.45.10 with a col. 1 rate of 6.9 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for 7-amino-1,3-naphthalene sulfonic acid mono potassium salt through December 31, 1992.

81. 2-amino-4-chlorophenol
(H.R. 1970; Mr. Schulze)

CURRENT LAW

Imports of this product enter under HTS subheading 2922.29.10 with a col. 1 rate of duty of 5.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for chlorophenol through December 31, 1992.

82. 2,4-diamino benzene sulfonic acid
(H.R. 1971; Mr. Schulze)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2921.51.50 with a col. 1 rate of duty of 2.4 cents per kilogram plus 18.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for 2,4-diamino benzene sulfonic acid through December 31, 1992.

83. 2,5 dichloro-4-(3-methyl-5-oxo-2 pyrazolin-1-yl) benzene sulfonic acid

(H.R. 1972; Mr. Schulze)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2933.19.42 with a col. 1 rate of duty of 3.7 cents per kilogram plus 16.2 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for this chemical through December 31, 1992.

84. 7-hydroxy 1,3-naphthalene disulfonic acid-dipotassium salt

(H.R. 1973; Mr. Schulze)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2908.20.50 with a col. 1 rate of 1.5 cents per kilogram plus 19.4 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for 7-hydroxy 1,2-naphthalene disulfonic acid-dipotassium salt through December 31, 1992.

85. O-Anisidine

(H.R. 1974; Mr. Schulze)

CURRENT LAW

Imports of O-Anisidine enter under HTS subheading 2922.22.10 with a col. 1 rate of duty of 7.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for O-Anisidine through December 31, 1992.

86. 1-Amino-2-Bromo-4-Hydroxy-anthraquinone

(H.R. 1975; Mr. Schulze)

CURRENT LAW

Imports of the subject chemical enter under HTS subheading 2922.50.40 with a col. 1 rate of 3.7 cents per kilogram plus 15.6 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for 1-Amino-2-Bromo-4-Hydroxy-anthraquinone through December 31, 1992.

87. 2-chloro-4-nitroaniline
(H.R. 1976; Mr. Schulze)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2921.42.50 with a col. 1 rate of duty of 2.4 cents per kilogram plus 18.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for 2-chloro-4nitroaniline through December 31, 1992.

88. 2,3 dihydro 1,3,3 trimethyl-2-methylene-1H-indole
(H.R. 1978; Mr. Schulze)

CURRENT LAW

Imports of the subject chemical enter under HTS subheading 2933.90.39 with a col. 1 rate of duty of 3.7 cents per kilogram plus 16.2 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for this chemical through December 31, 1992.

89. 2[(4 aminophenyl) sulfonyl] ethanol hydrogen sulfate ester
(H.R. 1979; Mr. Schulze)

CURRENT LAW

Imports of the subject chemical enter under HTS subheading 2930.90.20 with a col. 1 rate of duty of 6.7 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for 2[(4aminophenyl) sulfonyl] ethanol hydrogen sulfate ester through December 31, 1992.

90. 7-anilino-4-hydroxy-2 naphthalene sulfonic acid
(H.R. 1980; Mr. Schulze)

CURRENT LAW

Imports of the subject chemical enter under HTS subheading 2922.29.50 with a col. 1 rate of duty of 3.7 cents per kilogram plus 15.6 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for 7-aniline-4-hydroxy-2 naphthalene sulfonic acid through December 31, 1992.

91. 6-t-butyl 2,4 xylenol
(H.R. 1983; Mr. Shays)

CURRENT LAW

Imports of the subject chemical enter under HTS subheading 2907.19.50 with a col. 1 rate of duty of 7.2 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for 6-t-butyl 2,4 xylenol through December 31, 1992.

92. Mixed ortho/para toluene sulfonomide
(H.R. 1988; Mr. Stokes)

CURRENT LAW

Imports of mixed ortho/para toluene sulfonomide enter under HTS subheading 2935.00.47 with a col. 1 rate of duty of 7.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for mixed ortho/para toluene sulfonomide through December 31, 1992.

93. 1,4-diamino-2,3 dihydroanthraquinone
(H.R. 1996; Mr. Schulze)

CURRENT LAW

Imports of the subject chemical enter under HTS subheading 2922.30.30 with a col. 1 rate of duty of 3.7 cents per kilogram plus 15.6 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for this chemical through December 31, 1992.

94. Tfa Lys Pro in free base and tosyl salt forms
(H.R. 2001; Mr. Valentine)

CURRENT LAW

Imports of Tfa Lys Pro in free base and tosyl salt forms enter under HTS subheadings 2922.49.50 and 2922.49.30, respectively, with a col. 1 rate of 3.7 percent and 13.5 percent ad valorem, respectively.

PROPOSAL

Suspends the col. 1 rate of duty for Tfa Lys Pro in free base and tosyl salt forms through December 31, 1992.

95. Dimethoate
(H.R. 2003; Mr. Frenzel)

CURRENT LAW

Imports of Dimethoate enter under HTS subheading 2920.10.50 with a col. 1 rate of duty of 3.7 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for Dimethoate through December 31, 1992.

96. Castor oil and its fractions
(H.R. 2007; Mr. McGrath)

CURRENT LAW

Imports of castor oil and its fractions enter under HTS subheading 1515.30.00 with a col. 1 rate of 3.3 cents per kilogram.

PROPOSAL

Suspends the col. 1 rate of duty for castor oil and its fractions through December 31, 1992.

97. Certain Fiberglass Yarns
(H.R. 2077; Mr. Brown of Colorado)

CURRENT LAW

Imports of colored glass yarns enter under HTS subheading 7019.10.20 with a col. 1 rate of duty of 9.6 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for certain fiberglass yarns through December 31, 1992.

98. Ciprofloxacin and Nimodipine
(H.R. 2367; Mr. Morrison of Connecticut)

CURRENT LAW

Imports of Ciprofloxacin and Nimodipine enter under HTS subheading 2933.59.27 and 2933.90.30 with col. 1 rates of duty of 8.1 percent and 8 percent ad valorem, respectively.

PROPOSAL

Suspends the col. 1 rates of duty for Ciprofloxacin and Nimodipine through December 31, 1992.

99. Two-stroke cycle piston engines
(H.R. 1094; Mr. Frenzel)

CURRENT LAW

Imports of two-stroke cycle engines for use in vehicles (excepting personal watercraft engines) enter under HTS subheadings 8407.32.20 and 8407.33.20, with a col. 1 general rate of 3.1 percent ad valorem.

PROPOSAL

Suspends the col. 1 rates on two and four-cycle engines through December 31, 1992. No specific provision for personal water craft engines.

100. Self-folding collapsible umbrellas
(H.R. 1126; Mr. Gradison)

CURRENT LAW

Imports of self-folding collapsible umbrellas enter under HTS subheading 6601.91.00, with a col. 1 rate of 82 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 6601.91.00 through December 31, 1992.

101. Certain chemical intermediate
(H.R. 1156; Mr. Jacobs)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2934.90.40, with a col. 1 rate of 13.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 2934.90.40 through December 31, 1992.

102. Octadecyl isocyanate (ODI)
(H.R. 1160; Mr. Mollohan)

CURRENT LAW

Imports of this specialty chemical enter under HTS subheading 2929.10.40, with a col. 1 rate of 13.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 2929.10.40 through December 31, 1992.

103. Certain plastic web sheeting
(H.R. 1428; Mr. Frenzel)

CURRENT LAW

Imports of nonwoven fiber sheet of polyester fibers enter under HTS subheading 5603.00.90 with a col. 1 rate of 12.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty on certain plastic web sheeting through December 31, 1992.

104. Resolin Red F$_3$BS components I and II
(H.R. 1443; Mr. Ravenel)

CURRENT LAW

Imports of these products enter under HTS subheading 3204.11.20, with a col. 1 rate of 15 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 3204.11.20 through December 31, 1992.

105. Fluorescent yellow FGPN
(H.R. 1680; Mr. Crane)

CURRENT LAW

Imports of these dyes enter under HTS subheading 3204.19.19, with a col. 1 rate of 20 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for fluorescent yellow FGPN through December 31, 1992.

106. Fluorescent yellow R
(H.R. 1681; Mr. Crane)

CURRENT LAW

Imports of fluorescent yellow R dyes enter under HTS subheading 3204.19.15, with a col. 1 rate of 20 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 3204.19.15 through December 31, 1992.

107. Pigment red 178
(H.R. 1715; Mr. Vander Jagt)

CURRENT LAW

Imports of these coatings enter under HTS subheading 3204.17.10, with a col. 1 rate of 8.3 percent ad valorem.

PROPOSAL

Suspends the col. 1 duty for Pigment Red 178 coatings through December 31, 1990.

108. DEMAP
(H.R. 1716; Mr. Vander Jagt)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2922.29.15, with a col. 1 rate of 6.8 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for DEMAP, item 2922.29.15, through December 31, 1992.

109. Pigment red 149 dry and pigment red 149 presscake
(H.R. 1718; Mr. Vander Jagt)

CURRENT LAW

Imports of these pigments enter under HTS subheading 3204.17.50, with a col. 1 rate of 20 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for these pigments through December 31, 1990.

110. Naphthol AS types
(H.R. 1791; Ms. Schneider)

CURRENT LAW

Imports of Naphthol AS types enter under HTS subheading 2924.29.14 with a col. 1 rate of duty of 14 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for item 2924.29.14 through December 31, 1992.

111. 1,6-hexamethylene diisocyanate
(H.R. 1872; Mr. Archer)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2929.10.50 with a col. 1 rates of duty of 2.9 cents per kilogram plus 16.2 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for 1,6-hexamethylene diisocyanate through December 31, 1992.

112. Garments specially designed for handicapped persons who are not ambulatory
(H.R. 1898; Mr. DeFazio)

CURRENT LAW

Imports of particular garments for nonambulatory handicapped persons enter under HTS headings 6203, 6304, 6205, and 6206 with col. 1 rates of duty ranging from 4.7 percent to 52.9 cents per kilogram plus 21 percent ad valorem (trousers); 5.9 percent to 17 percent ad valorem (dresses), 3 percent to 52.9 cents per kilogram plus 21 percent ad valorem (shirts); and 3.7 percent to 82.7 cents per kilogram plus 21 percent ad valorem (blouses).

PROPOSAL

Suspends the col. 1 rate of duty for particular garments specially designed for handicapped persons who are not ambulatory through December 31, 1992.

113. Certain acid black powder and presscake
(H.R. 1986; Mr. Solomon)

CURRENT LAW

Imports of these compounds enter under HTS subheading 3204.12.40 with a col. 1 rate of 15 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for certain acid black powder and presscake through December 31, 1992.

114. Rhodamine 2C base, polymin P and polymin P hydrochloride, and polymin SNA 60
(H.R. 1987; Mr. Solomon)

CURRENT LAW

Imports of the 4 chemicals enter under HTS subheadings 2932.90.45 and 3911.90.30 with col. 1 rates of 3.7 percent per kilogram plus 16.2 percent ad valorem and 5.8 percent ad valorem, respectively.

PROPOSAL

Suspends the col. 1 rates for rhodamine 2C base, polymin P and polymin P hydrochloride, and polymin SNA 60 through December 31, 1992.

115. Chlorinated synthetic rubber
(H.R. 2250; Mr. Ridge)

CURRENT LAW

Imports of chlorinated synthetic rubber enter under HTS subheading 3913.90.50 with a col. 1 rate of duty of 2.2 cents per kilogram plus 7.7 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for chlorinated synthetic rubber through December 31, 1992.

Extension of Existing Suspension Bills

116. Certain wools
(H.R. 944; Mr. Frenzel)

CURRENT LAW

Imports of coarse wool are classifiable under HTS heading 5101, but receive temporary duty-free treatment for col. 1 general and col. 2 sources under HTS heading 9902.51.01 (expires January 1, 1991).

PROPOSAL

Continues current duty suspension for item 9902.51.01 until December 31, 1992.

117. Certain parts of indirect process electrostatic copying machines
(H.R. 1683; Mr. Crane)

CURRENT LAW

Imports of these parts are classifiable under HTS subheading 9009.90.00, but receive temporary duty-free treatment for col. 1 sources under HTS subheading 9902.90.90 (expires December 31, 1990).

PROPOSAL

Continues current duty suspension for electrostatic copying machine parts and accessories through December 31, 1992.

118. Certain benzenoid dye intermediates
(H.R. 1739; Mr. Schulze)

CURRENT LAW

Imports of these chemicals enter under numerous HTS subheadings with col. 1 rates of duty ranging from 5.8 percent ad valorem to 1.5 cents per kilogram plus 19.4 percent ad valorem.

PROPOSAL

Extends current duty suspension for certain benzenoid dye intermediates through December 31, 1992. Excludes item 9902.29.10.

119. Certain textile machines
(H.R. 1740; Mr. Schulze)

CURRENT LAW

Imports of narrow fabric looms, wool carding and spinning machines, and lace-braiding machines enter under HTS subheadings 8466.10.00; 8445.11.00 and 8445.20.00; and 8447.90.10, respectively, with col. 1 rates of duty of 4.7 percent ad valorem, 4.2 percent ad valorem, and 4.7 percent ad valorem; duties are suspended through December 31, 1990.

PROPOSAL

Extends current duty suspension on certain textile machines through December 31, 1992.

120. Certain knitwear fabricated in Guam
(H.R. 1768; Mr. Blaz)

CURRENT LAW

Imports of knitwear fabricated in Guam enter under HTS heading 6110 with col. 1 rates of duty from 6 percent to 34.2 percent ad valorem; duties currently suspended through December 31, 1992.

PROPOSAL

Extends the existing col. 1 rate of duty suspension on certain knitwear fabricated in Guam through December 31, 1996.

121. Crude feathers and down
(H.R. 1779; Mr. Jenkins)

CURRENT LAW

Imported crude feathers and down are classifiable under HTS subheading 0505.10.00, but receive temporary duty-free treatment under items 9902.05.10 and 9902.05.11 (expires December 31, 1990).

PROPOSAL

Continues current duty suspension through December 31, 1992.

122. Dinocap and mixtures of dinocap with application adjuvants
(H.R. 1824; Mr. Schulze)

CURRENT LAW

Imports of these products are classifiable under HTS subheadings 2916.19.50 and 3808.20.10, but receive temporary duty-free treatment for col. 1 sources under HTS headings 9902.29.14 and 9902.38.06 (which expire December 31, 1990).

PROPOSAL

Continues the current duty suspension on dinocap and on mixtures of dinocap with application adjuvants through December 31, 1992.

123. Triethyleneglycol dichloride
(H.R. 1825; Mr. Schulze)

CURRENT LAW

Imports of TGDC are classifiable under HTS subheading 2909.19.50, but receive temporary duty-free treatment for col. 1 sources under HTS heading 9902.29.11 (expires December 31, 1990).

PROPOSAL

Continues current duty suspension for triethyleneglycol dichloride through December 31, 1992.

124. Mixtures of maneb, zineb, mancozeb and metiram
(H.R. 1826; Mr. Schulze)

CURRENT LAW

Imports of these mixtures are classifiable under HTS subheading 3808.20.20, but receive temporary duty-free treatment for col. 1 sources under HTS heading 9902.38.08 (expires December 31, 1990).

PROPOSAL

Continues current duty suspension for mixtures of maneb, zineb, mancozeb, and metiram through December 31, 1992.

125. Methylene blue
(H.R. 1827; Mr. Schulze)

CURRENT LAW

Imports of methylene blue are classifiable under HTS subheading 3204.13.50, but receive temporary duty-free treatment for col. 1 sources under HTS heading 9902.32.04 (expires December 31, 1990).

PROPOSAL

Continues current duty suspension for methylene blue through December 31, 1992.

126. 2-n-octyl-4-isothiazolin-3-one, and mixtures of 2-n-octyl-4-isothiazolin-3-one and application adjuvants
(H.R. 1828; Mr. Schulze)

CURRENT LAW

Imports of these products are classifiable under HTS subheadings 2934.10.50, 3808.90.20, and 3808.90.50, but receive temporary duty-free treatment for col. 1 sources under HTS heading 9902.29.76 (expires December 31, 1990).

PROPOSAL

Continues current duty suspension for these products through December 31, 1992.

127. 3-amino-3-methyl-1-butyne
(H.R. 1829; Mr. Schulze)

CURRENT LAW

Imports of this chemical are classifiable under HTS subheading 2921.19.50, but receive temporary duty-free treatment for col. 1 sources under HTS heading 9902.29.24 (expires December 31, 1990).

PROPOSAL

Continues current duty suspension for 3-amino-3methyl-1-butyne through December 31, 1992.

128. m-Hydroxybenzoic acid
(H.R. 1830; Mr. Schulze)

CURRENT LAW

Imports of this chemical are classifiable under HTS subheading 2918.29.10, but receive temporary duty-free treatment for col. 1 sources under HTS heading 9902.29.21 (expires December 31, 1990).

PROPOSAL

Continues current duty suspension for this chemical through December 31, 1992.

129. 1,1-bis(4-chlorophenyl)-2,2,2-trichloroethanol (dicofol), and mixtures of dicofol and application adjuvant
(H.R. 1831; Mr. Schulze)

CURRENT LAW

Imports of these chemicals are classifiable under HTS subheadings 2906.29.50 and 3808.90.10, but receive temporary duty-free treatment for col. 1 sources under HTS headings 9902.29.06 and 9902.38.11 (expires December 31, 1990).

PROPOSAL

Continues current duty suspension for dicofol and on mixtures of dicofol and application adjuvant through December 31, 1992.

130. Mixtures of 5-chloro-2-methyl-4-isothiazolin-3-one, 2-methyl-4-isothiazolin-3-one, magnesium chloride and stabilizers, whether or not containing application adjuvants
(H.R. 1832; Mr. Schulze)

CURRENT LAW

Imports of these chemical mixtures are classifiable under HTS subheading 3808.90.20, but receive temporary duty-free treatment for col. 1 sources under HTS heading 9902.38.10 (expires December 31, 1990).

PROPOSAL

Continues the current duty suspension for these chemical mixtures through December 31, 1992.

131. Crosslinked polyvinylbenzyltrimethylammonium chloride (Cholestyramine resin USP)
(H.R. 1833; Mr. Schulze)

CURRENT LAW

Imports of Cholestyramine resin USP are classifiable under HTS subheading 3914.00.00, but receive temporary duty-free treatment for col. 1 sources under HTS heading 9902.39.14 (expires December 31, 1990).

PROPOSAL

Continues the current suspension for Cholestyramine resin USP through December 31, 1992.

132. Mixtures of mancozeb and dinocap
(H.R. 1834; Mr. Schulze)

CURRENT LAW

Imports of these products are classifiable under HTS subheading 3808.20.10, but receive temporary duty-free treatment for col. 1 sources under HTS heading 9902.38.07 (expires December 31, 1990).

PROPOSAL

Continues the current suspension for mixtures of mancozeb and dinocap through December 31, 1992.

133. d-6-Methoxy-a-methyl-2-naphthaleneacetic acid and its sodium salt
(H.R. 1838; Mr. Skaggs)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2918.90.30 with a col. 1 rate of duty of 6.8 percent ad valorem; duty currently suspended under heading 9902.29.22 until December 31, 1990.

PROPOSAL

Continues the current duty suspension for this imported chemical through December 31, 1992.

134. Fresh cantaloupes
(H.R. 1897; Mr. de la Garza)

CURRENT LAW

Imports of fresh cantaloupes enter under HTS subheading 0807.10.20 with a col. 1 rate of 35 percent ad valorem; duty currently suspended under heading 9902.08.07 until December 31, 1990.

PROPOSAL

Continues current part-year duty suspension for fresh cantaloupes imported through December 31, 1992.

135. Stuffed dolls, certain toy figures, and the skins thereof
(H.R. 1920; Mr. Guarini)

CURRENT LAW

Imports of inexpensive toy-type costume jewelry, stuffed dolls, certain toy figures and the skins thereof are classifiable under HTS subheadings in Chapters 71 and 95, but receive temporary duty-free treatment for col. 1 sources under HTS headings 9902.71.13, 9902.95.01, 9902.95.02, 9902.95.03, and 9902.95.04.

PROPOSAL

Continues the current duty suspension for toy-type jewelry, stuffed dolls, certain toy figures, and the skins thereof through December 31, 1992, with minor technical changes.

136. Certain knitting machines designed for sweater strip or garment length knitting

(H.R. 1940; Mr. Manton)

CURRENT LAW

Imports of knitting machines for sweater or garment strip knitting are classifiable under HTS subheadings 8447.12.90, 8448.19.00, and 8448.59.10 but receive temporary duty-free treatment for col. 1 sources under HTS heading 9901.84.48 (expires Dec. 31, 1989).

PROPOSAL

Continues current duty-free treatment for certain knitting machines designed for sweater strip or garment length knitting through December 31, 1992.

137. Triallate

(H.R. 2249; Mr. Pickle)

CURRENT LAW

Imports of this chemical are classifiable under HTS subheading 2930.20.50 (3.7 percent), but receive duty-free treatment for col. 1 sources under HTS heading 8902.29.60 (expires December 31, 1990).

PROPOSAL

Continues the current duty suspension on triallate through December 31, 1992.

138. Certain small toys and novelty goods

(H.R. 2447; Mr. Downey)

CURRENT LAW

Imports of certain small toys and novelty goods are classifiable under HTS subheadings 7117.19.10, 7117.19.50, 7117.19.40, or headings 9502, 9503, 9504, or subheading 9505.90.00, but receive temporary duty-free treatment for col. 1 sources under HTS heading 9902.71.13 (expires December 31, 1990).

PROPOSAL

Continues the current duty suspension for certain small toys and novelty goods through December 31, 1992.

139. C-Amines
(H.R. 1483; Mr. Vander Jagt)

CURRENT LAW

Imports of these chemicals are classifiable under HTS subheadings 2921.43.50 and 2971.49.50, but receive temporary duty-free treatment for col. 1 sources under HTS subheading 9902.29.29 (expires December 31, 1990).

PROPOSAL

Eliminates the current duty suspensions for C-amines which have col. 1 duties of 2.4 cents per kilogram plus 18.8 percent ad valorem.

Duty-Free Bills

140. Three-dimensional cameras
(H.R. 767; Mr. Bilbray)

CURRENT LAW

Imports of cameras capable of producing a three-dimensional effect enter under HTS subheading 9006.53.00, with a col. 1 rate of 18 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for these cameras under subheading 9006.53.10 through December 31, 1992, with a further clarification of the item description.

141. Relief for the State of Florida
(H.R. 912; Mr. Shaw)

CURRENT LAW

Imports of bi-level railcars were classified under TSUS item 690.15, with a col. 1 rate of 18 percent ad valorem and a col. 2 rate of 45 percent ad valorem.

PROPOSAL

Provides duty-free treatment for bi-level rail cars designed for and used by the Department of Transportation for the State of Florida. Treatment would apply to railcars entered after March 14, 1988, and before January 1, 1989, either under col. 1 or col. 2 rates.

142. 2,6-HNA
(H.R. 1027; Mr. Jenkins)

CURRENT LAW

Imports of this chemical enter under HTS subheading 2918.29.50, with a col. 1 rate of 3.7 cents per kilogram plus 17.9 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate for item 2918.29.50 through December 31, 1992.

143. Certain Polyester Filament Yarns
(H.R. 1596; Mr. Frenzel)

CURRENT LAW

Imports from CBI countries of polyester filament yarns enter under HTS subheading 5402.42.00 and 5402.43.00 with a col. 1 rate of duty of 10 percent ad valorem.

PROPOSAL

Provides duty-free treatment to certain polyester filament yarns produced in CBI beneficiary countries wholly from United States materials, and removes them from quota through December 31, 1992. (Excludes polyester filament yarn under 90 denier with specific characteristics.)

144. Corned beef in airtight containers
(H.R. 1639; Mr. Russo)

CURRENT LAW

Imports of corned beef in airtight containers currently receive temporary duty-free treatment under HTS item 9902.16.02 (expires December 31, 1989).

PROPOSAL

Extends col. 1 duty-free treatment of item 1602.50.10 through December 31, 1992.

145. Certain menthol feedstocks
(H.R. 1821; Mr. Ravenel)

CURRENT LAW

Imports of menthol feedstocks enter under HTS subheading 2906.19.00 with a col. 1 rate of duty of 7.1 percent ad valorem, but these products now enter duty-free under HTS heading 9902.29.05 until December 31, 1990.

PROPOSAL

Continues duty-free treatment for certain menthol feedstocks through December 31, 1992.

146. Certain mixtures of hot red peppers and salt
(H.R. 1842; Mrs. Boggs)

CURRENT LAW

Imports of hot red peppers are classifiable under HTS subheading 0904.20.40, but receive temporary duty-free treatment for col. 1 sources under HTS heading 9902.09.04 (expires December 31, 1990).

PROPOSAL

Continues current duty-free treatment of col. 1 rates for certain mixtures of hot red peppers and salt through December 31, 1992.

147. Operatic sets, scenery, and properties
(H.R. 1848; Mr. Downey)

CURRENT LAW

Imports of theatrical and operatic scenery and properties enter under various HTS subheadings with varying col. 1 rates of duty; a few are entered under HTS heading 9813.00.65 duty-free under bond.

PROPOSAL

Suspends the col. 1 rates for operatic scenery and properties, including operatic sets imported by certain nonprofit, cultural organizations through December 31, 1992.

148. Motor vehicle parts
(H.R. 1933; Mr. Levin of Michigan)

CURRENT LAW

Imports of certain motor vehicle parts enter under HTS subheading 7014.00.20 and provisions of heading 8483 with varying rates of duty; they are not currently eligible for benefits of the Automotive Products Trade Act.

PROPOSAL

Restores duty-free treatment for certain motor vehicle parts retroactive to January 1, 1987, through the date on which the President proclaims the modification to the Automotive Products Trade Act. Additional provisions provide for reliquidation of entries already made during that period.

149. Certain disposable surgical gowns and drapes
(H.R. 1997; Mr. Whitten)

CURRENT LAW

Imports of disposable surgical gowns and drapes are classifiable under HTS subheadings 6210.10.30 and 6307.90.65, but receive temporary duty-free treatment for col. 1 sources under HTS heading 9902.62.10 (expires December 31, 1990).

PROPOSAL

Continues current duty suspension for certain disposable surgical gowns and drapes through December 31, 1992.

150. Filing of a protest relating to certain customs entries
(H.R. 1998; Mr. Frenzel)

CURRENT LAW

Section 514 of the Tariff Act of 1930 does not allow a protest to be filed if more than 90 days have elapsed since liquidation of the entries.

PROPOSAL

Enables the filing of a protest relating to certain customs entries despite section 514.

151. Certain chemicals
(H.R. 2017; Mr. Torricelli)

CURRENT LAW

Imports of certain chemicals enter under HTS headings in chapter 29 with a col. 1 rate of duty ranging from 5.8 percent to 13.5 percent ad valorem.

PROPOSAL

Suspends the col. 1 rate of duty for certain chemicals through December 31, 1992. Excludes item 9902.30.07, AAPP.

152. Reliquidation of Certain Entries
(H.R. 2019; Mr. Livingston)

CURRENT LAW

Imports of large power transformers entered between 1974 and 1980 were subject to antidumping duties of $792,000. The customs broker, rather than the importer, was listed as the "importer of record" and is therefore liable for the payment of these duties.

PROPOSAL

Relieves the customs broker of liability for these antidumping duties.

Duty Reduction Bills

153. Impact line printers
(H.R. 943; Mr. Frenzel)

CURRENT LAW

Imports of all impact line printers, regardless of drive mechanism, enter under HTS subheading 8471.92.65, with a col. 2 rate of 35 percent ad valorem.

PROPOSAL

Reduces the col. 2 rate of duty for item 8471.92.65 to 3.75 percent ad valorem retroactive to October 1, 1988, through December 31, 1992.

154. Modeling pastes
(H.R. 1694; Mr. Green)

CURRENT LAW

Imports of these modeling pastes enter under HTS subheading 3407.00.00 with a col. 1 rate of 10 percent ad valorem.

PROPOSAL

Reduces the current duty for modeling paste by creating a new subheading (3407.00.10) with a col. 1 rate of 3.7 percent ad valorem through December 31, 1992.

155. Fresh, chilled, or frozen brussels sprouts
(H.R. 1924; Mr. Hunter)

CURRENT LAW

Imports of brussels sprouts enter under HTS subheading 0704.20.00 with a col. 1 rate of duty of 25 percent ad valorem.

PROPOSAL

Provides a retroactive duty treatment at the current rate of 12.5 percent ad valorem for imports entered into the United States after January 1, 1988.

Classification Bills

156. Certain chipper knife steel products
(H.R. 1760; Mr. Schuette)

CURRENT LAW

Imports of certain chipper knife steel products enter under HTS subheadings 7226.91.10 and 7226.91.30 with col. 1 rates of duty of 9.6 percent ad valorem and 11.6 percent ad valorem, respectively.

PROPOSAL

Corrects the permanent tariff classification of certain chipper knife steel products.

157. Certain gloves, mittens and mitts
(H.R. 1896; Mr. Dannemeyer)
(H.R. 1985; Mr. Skaggs)

CURRENT LAW

Imports of gloves and mitts for use in sports are classified by constituent materials in HTS chapters 42, 61, and 62 with col. 1 rates of up to 25 percent ad valorem.

Imports of nonleather sporting gloves enter under HTS subheadings 6116.00 and 6216.00 with col. 1 rates of duty from 3.7 percent to 25 percent ad valorem.

PROPOSAL

These bills were combined to include miscellaneous sport gloves under HTS subheading 6116.10.10 with ski and snowmobile gloves.

158. Gripping narrow fabrics of man-made fibers
(H.R. 1939; Mr. McMillan of North Carolina)

CURRENT LAW

Imports of fastener fabric tapes of manmade fibers enter under HTS subheading 5860.10.20 with a col. 1 rate of duty of 9.5 percent ad valorem.

PROPOSAL

Reduces the col. 1 rate of duty to 7 percent ad valorem through December 31, 1992.

159. Protective sports articles
(H.R. 1942; Mr. Mineta)

CURRENT LAW

Imports of protective sports articles of textile materials enter under HTS subheading 6201.93 and 6203.43 with a col. 1 rate of duty from 7.6 percent to 62.9 cents per kilogram plus 21 percent ad valorem.

PROPOSAL

Reduces through December 31, 1992, the col. 1 rate of duty for protective sports articles of textile materials to apply the same rates of duty that applied to such goods before January 1, 1989.

160. Zinc printing type
(H.R. 2074; Mr. Bilirakis)

CURRENT LAW

Imports of zinc printing type enter under HTS subheading 8442.50.90 with a col. 1 rate of duty of 8 percent ad valorem.

PROPOSAL

Reduces the col. 1 rate of duty for zinc printing type to 3.7 percent ad valorem through December 31, 1992.

161. Woven fabrics of carded wool or carded fine animal hair, of woven fabrics of combed wool or combed fine animal hair, and of certain gauzes
(H.R. 1902; Mr. Downey)

CURRENT LAW

Classifies tapestry and upholstery fabrics of wool or fine animal hair in HTS headings 5111 and 5112 and of gauze construction in 5803 at various rates.

PROPOSAL

Creates a new provision covering upholstery-weight fabrics with a lower limit of 140 grams per square meter at a 7 percent ad valorem duty rate.

Customs and Other Nontariff Matters Bills

162. Country of origin markings on manhole rings or frames (H.R. 1198; Mr. Green)

CURRENT LAW

The country of origin marking law which appears at section 304 of the Tariff Act of 1930 (19 U.S.C. 1314) generally requires that every article of foreign origin imported into the United States shall be marked in a conspicuous place. This law was further strengthened by the Trade and Tariff Act of 1984, which requires country of origin marking on the top surface of the manhole cover or frame.

PROPOSAL

Amends Section 304(e) of the Tariff Act of 1930 to eliminate the requirement that imported manhole rings or frames, covers, and assemblies be marked with its country of origin on the top surface.

163. Bicycle parts (H.R. 1785; Mr. Perkins)

CURRENT LAW

Imports of bicycles and their parts and accessories enter under HTS headings 8712 and 8714; they cannot take advantage of foreign trade zone duty reductions until 1991.

PROPOSAL

Amends the Foreign Trade Zones Act to renew until December 31, 1992, the existing prohibition on FTZ duty reductions applicable to bicycle parts not reexported outside the United States.

164. Molasses (H.R. 1925; Mr. Jenkins)

CURRENT LAW

Imports of certain edible molasses enter under HTS subheading 1702.90.40 with a col. 1 rate of duty of 0.77 cents per liter; the subheading's products are currently subject to quota.

PROPOSAL

Restores the previous exemption from quotas for edible molasses containing more than 6 percent nonsugar solids.

165. Customs facilities at Trout River, New York (H.R. 2305; Mr. Martin of New York)

CURRENT LAW

Port of entry at Trout River, New York, does not qualify as a commercial center under Customs Service's Northern Border Enhancement Program.

PROPOSAL

Requires the Commissioner of Customs to provide necessary facilities and equipment to permit port to qualify.

Technical Corrections

166. Jellies and Jams

CURRENT LAW

Imports of certain jellies and jams enter under HTS subheading 2007.99 with col. 1 rates ranging from free to 35 percent ad valorem.

PROPOSAL

Temporarily reduces the rates to those prevailing under the former TSUS. (col. 1 rate of 3-7 percent ad valorem.)

167. Certain Glasses

CURRENT LAW

Imports of certain glasses and glassware enter under HTS heading 7013 with col. 1 rates ranging from 6 to 38 percent ad valorem.

PROPOSAL

Temporarily reduces the rates to those prevailing under the former TSUS. (col. 1 rate of 6.6 - 20 percent ad valorem.)

168. Certain Semiprecious Stones

CURRENT LAW

Imports of certain semiprecious stones enter under HTS subheading 7116.20.20 with a col. 1 rate of 21 percent ad valorem.

PROPOSAL

Temporarily reduces the rates to those prevailing under the former TSUS. (col. 1 rate of 2.1 percent ad valorem.)

169. Duty Refund

CURRENT LAW

Imports of 1-(3-Sulfopropyl)Pyridinum Hydroxide are subject to duty-free treatment from October 1, 1988, through December 31, 1990.

PROPOSAL

Grants retroactive duty-free treatment to products imported under TSUS item 406.39 for the October 1, 1988, to December 31, 1988 period. Legislation specified duty-free treatment for item 406.42.

MISCELLANEOUS TARIFF BILLS - 1989

PRELIMINARY ANNUAL REVENUE ESTIMATES

ITEM	ORIGINAL H.R. NO.	ESTIMATE* ($ in thousands)
		Duty Suspension Bills
1.	653	-650
2.	698	-1,000
3.	731	-1,933
4.	732	-2,000
5.	914	-68
6.	1184	-6,511
7.	1196	-9,504
8.	1442	-916
9.	1445	-145
10.	1446	-600
11.	1447	-324
12.	1482	-466
13.	1537	-38
14.	1571 & 1855	-22,200
15.	1657	-474
16.	1695	-800
17.	1696	-2,000
18.	1697	-461
19.	1724	-606
20.	1726	-248
21.	1738	-378
22.	1749	-876
23.	1766	-10,100
24.	1770	-6
25.	1777	-176
26.	1789	-135
27.	1790	-44
28.	1792	-10
29.	1793	-1,000
30.	1794	-680
31.	1795	-3
32.	1814	0
33.	1815	-19
34.	1817	-42
35.	1818	-457
36.	1822	-990
37.	1837	0
38.	1850	-4,753
39.	1857	-8,000

*On a calendar year basis from information provided by analysts of the U.S. International Trade Commission. We are awaiting official CBO estimates.

ITEM	ORIGINAL H.R. NO.	ESTIMATE* ($ in thousands)
40.	1858	-916
41.	1859	-451
42.	1868	-13
43.	1884	-1,100
44.	1885	-3,000
45.	1887	-106
46.	1888	-78
47.	1889	0
48.	1890	-495
49.	1891	-79
50.	1892	-10
51.	1893	-18
52.	1894	-260
53.	1904	-200
54.	1905	-100
55.	1906	-433
56.	1907	-6,000
57.	1910	-600
58.	1911	0
59.	1912	-200
60.	1914	-130
61.	1923	-238
62.	1926	-500
63.	1927	-350
64.	1934	0
65.	1943	-31
66.	1944	-375
67.	1954	-90
68.	1956	-32
69.	1958	-150
70.	1959	-95
71.	1960	-680
72.	1961	-115
73.	1962	-38
74.	1963	-77
75.	1964	-112
76.	1965	-56
77.	1966	-94
78.	1967	-234
79.	1968	-25
80.	1969	-40
81.	1970	-11
82.	1971	-10
83.	1972	-18
84.	1973	-202
85.	1974	-118
86.	1975	-59
87.	1976	-368
88.	1978	-652

ITEM	ORIGINAL H.R. NO.	ESTIMATE* ($ in thousands)
89.	1979	0
90.	1980	-38
91.	1983	-216
92.	1988	-2,000
93.	1996	-51
94.	2001	-250
95.	2003	-636
96.	2007	-910
97.	2077	-178
98.	2367	-1,100
99.	1094	-2,500
100.	1126	-7
101.	1156	-10,000
102.	1160	-140
103.	1428	-126
104.	1443	-500
105.	1680	-100
106.	1681	-50
107.	1715	-450
108.	1716	-216
109.	1718	-500
110.	1791	-725
111.	1872	-1,000
112.	1898	0
113.	1986	-40
114.	1987	-422
115.	2250	-468
		-120,195

Extension of Existing Suspension Bills

ITEM	ORIGINAL H.R. NO.	ESTIMATE* ($ in thousands)
116.	944	-699
117.	1683	-27,000
118.	1739	-2,000
119.	1740	-529
120.	1768	-6,600
121.	1779	-5,000
122.	1824	-25
123.	1825	-180
124.	1826	-340
125.	1827	-35
126.	1828	-350
127.	1829	-95
128.	1830	-280
129.	1831	-680
130.	1832	-1,230
131.	1833	-500
132.	1834	-230

ITEM	ORIGINAL H.R. NO.	ESTIMATE* ($ in thousands)
133.	1838	-1,000
134.	1897	-12,600
135.	1920	-62,000
136.	1940	-714
137.	2249	-30
138.	2447	-62,000
139.	1483	+3,000
		-181,117

Duty-Free Bills

140.	767	-60
141.	912	-3,240
142.	1027	-451
143.	1596	-589
144.	1639	-72
145.	1821	-32
146.	1842	-1
147.	1848	-70
148.	1933	
149.	1997	-60
150.	1998	0
151.	2017	-400
152.	2019	-300
		-5,275

Duty Reduction Bills

153.	943	-250
154.	1694	-100
155.	1924	-646
		-996

Classification Bills

156.	1760	-262
157.	1896 & 1985	-24,000
158.	1939	0
159.	1942	-780
160.	2074	-10
161.	1902	-3,880
		-28,932

ITEM	ORIGINAL H.R. NO.	ESTIMATE* ($ in thousands)
	Customs and Other Nontariff Matters Bills	
162.	1198	
163.	1785	+5,800
164.	1925	+30
165.	2305	
		5,830
	Technical Corrections	
166.	Jellies and Jam	**N/A
167.	Certain Glasses	N/A
168.	Certain Semiprecious Stones	N/A
169.	Duty Refund	-20
		-20

GRAND TOTAL OF ALL BILLS

-330,705

**not available.

Elimination of Superfund Petroleum Tax Differential

Present Law

Superfund taxes of 8.2 cents per barrel for domestic crude oil and 11.7 cents per barrel for imported petroleum products (including crude oil) are imposed on the receipt of crude oil at a U.S. refinery, the import of petroleum products and, if the tax has not already been paid, on the use or export of domestically produced oil.

Domestic crude oil subject to tax includes crude oil condensate and natural gasoline, but not other natural gas liquids. Taxable crude oil does not include oil used for extraction purposes on the premises from which it was produced, or synthetic petroleum (e.g., shale oil, liquids from coal, tar sands, biomass), or refined oil.

Petroleum products that are subject to tax upon import include crude oil, crude oil condensate, natural and refined gasoline, refined and residual oil, and any other hydrocarbon product derived from crude oil or natural gasoline that enters the United States in liquid form.

The petroleum tax generally expires on December 31, 1991. The tax will terminate earlier than that date if cumulative Superfund receipts during the reauthorization period equal or exceed $6.65 billion, and under certain other conditions.

Canada, Mexico, and the European Community filed a formal complaint under the General Agreement on Tariffs and Trade ("GATT") after the Superfund tax on imported oil was raised above that on domestic oil by the Superfund Amendments and Reauthorization Act of 1986. A GATT panel convened to investigate the complaint concluded that the differential petroleum tax rate is contrary to the GATT, and the panel ruling was accepted unanimously by the GATT Council on June 17, 1987. Under GATT rules, the United States either must amend the Superfund tax or compensate the plaintiffs to avoid possible retaliation.

Explanation of Administration's Proposal

The Administration has proposed a revenue neutral change to the Superfund excise taxes on domestic crude oil and imported petroleum products (including crude oil): increasing the rate on domestic crude oil to 9.7 cents per barrel (presently 8.2 cents per barrel) and lowering the rate on imported petroleum products to 9.7 cents per barrel (presently 11.7 cents per barrel) so that both rates are at the same level. This proposal would be effective on October 1, 1989. This proposal was included in President Bush's proposed budget for fiscal year 1990. This proposal was also included in President Reagan's proposed budgets for fiscal years 1989 and 1990.

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1. Establishment of the Social Security Administration as an Independent Agency

Present Law

Section 702 of the Social Security Act gives the Secretary of Health and Human Services (HHS) responsibility for the Old-Age, Survivors and Disability Insurance (OASDI) program and the Supplemental Security Income (SSI) program. The administration of both these programs has been delegated to the Social Security Administration (SSA).

The SSA Office of Hearings and Appeals holds hearings on appeals of denied claims for OASDI, SSI, and medicare benefits. These hearings are conducted by Administrative Law Judges (ALJs).

Explanation of Provision

The provision would establish the Social Security Administration as an independent agency with administrative responsibility for the OASDI and SSI programs. The new agency would be governed by a bipartisan, full-time, three-member Social Security Board. Members of the Board would be appointed by the President, with the advice and consent of the Senate, and would serve staggered six-year terms, with the exception of the first three members whose terms would expire on June 30, 1993, June 30, 1995, and June 30, 1997, respectively. Board members could only be removed from office for neglect of duty or malfeasance. The Chairperson of the Board would be designated by the President from among the members of the Board to serve as Chairperson for a four-year term.

The Board would establish broad legislative and regulatory policy and would oversee the operation of the agency. The policies and regulations established by the Board would be covered under the notice and public comment provisions of the Administrative Procedures Act of 1946. To handle day-to-day administration, the Board would appoint an Executive Director to act as chief operating officer. The Executive Director would serve a four-year term and could be removed only for cause. In establishing this organizational structure, the Subcommittee intends that the Board would focus on developing policy for SSA and that the Executive Director would manage the agency.

The provision also establishes the positions of Deputy Director, General Counsel, Inspector General, and Beneficiary Ombudsman.

Administrative Law Judges (ALJs) in the agency would report directly to the Board. The Board would appoint the Chief ALJ, who would be charged with assuring that hearings are conducted in accordance with applicable law and regulations. In addition to presiding over hearings of appeals of agency decisions, ALJs would hear appeals of medicare claims, as is currently the practice in SSA's Office of Hearings and Appeals. The Board would consult with the Secretary of HHS about any changes in appeal procedures which affect medicare claims. By July 1, 1992, both the Secretary of HHS (in consultation with the Social Security Board) and the Comptroller General of the United States would be required to issue reports to Congress on the appropriateness of maintaining this arrangement for medicare appeal hearings.

In addition to establishing the independence of SSA HHS, the provision would provide the new Social Security Administration with demonstration authority to perform certain management functions generally controlled by the Office of Personnel Management (OPM) and the General Services Administration (GSA). Specifically, the board would have authority to test the new agency's capacity to recruit, compensate, and manage personnel and to acquire and maintain facilities. (GSA's current authority over SSA's procurement of automated data processing and telephone equipment and services would remain unchanged). Before initiating a demonstration project relating to personnel, agency management would be required to consult with affected personnel and their union representatives. In mid-1994, the General Accounting Office would report to Congress on the outcome of the demonstration projects and assess the readiness of the agency to assume permanent and full authority for these management functions.

All orders, determinations, rules, regulations, permits, contracts, collective bargaining agreements, recognitions of labor organizations, certificates, licenses, and privileges in effect at SSA at the time of the transition would remain in force at the new agency until their expiration or modification in accordance with law. Thus, a union's national consultation rights with SSA would be unaffected by the transition; and individual work units would retain their collective bargaining agent to the extent that the same community of interest continued to exist within them after the transition, in accordance with current law. Further, following the precedent of recent legislation establishing the Department of Energy, the Department of Education, and separating the National Archives from GSA, the transfer would not cause any full-time or part-time employee to be reduced in grade or compensation for one year after the transition.

The Department of Health and Human Services would also transfer to the new agency six level V and six level IV Executive Schedule positions. To adjust for the new agency's expanded responsibilities, the Board would be required to develop a comprehensive work-force plan as part of its appropriations request which could serve as a basis for an increase in the number of Senior Executive Service positions allocated to it.

Effective Date

In general, the provision would take effect July 1, 1990.

2. Increase in the Retirement Test for Workers Age 65-69

Present Law

In 1989, individuals age 65-69 may earn up to $8,880 in wages or self-employment income annually and still be treated as retired; that is, they will have no reduction in their social security benefit as a result of earnings at or below this exempt amount. The exempt amount is automatically adjusted each year to reflect the change in average wages in the economy. The retirement test for those age 65-69 is projected to rise to $9,360 in 1990 and to $9,840 in 1991. The retirement test for those under age 65 is currently $6,480 and is projected to rise to $6,840 in 1990.

For earnings in excess of these amounts, $1 of benefits is withheld for each $2 of earnings. Beginning in 1990, beneficiaries age 65-69 will lose only $1 in benefits for every $3 in earnings in excess of the limit. Persons age 70 years and older are not subject to the retirement test.

Explanation of Provision

The provision would increase the retirement test applied to those age 65-69 by $360 in 1990 and $240 in 1991. This increase would be in addition to the automatic annual increases reflecting wage growth in the economy. The resulting exempt amounts are projected to be $9,720 in 1990 and $10,440 in 1991. The exempt amount for individuals age 62-64 would be frozen in 1990 for one year at the 1989 level, $6,480.

The Congressional Budget Office (CBO) would be required to study (a) the distribution of benefit increases by various income categories resulting from the elimination of, or alternative increases in, the retirement test, (b) the impact on the OASI trust fund of such alternatives, and (c) the impact on labor force participation of such alternatives. It is the intention of the Subcommittee that the Social Security Administration will cooperate in this effort by providing CBO with the benefit data necessary to complete the study.

Effective Date

The provision would be effective for taxable years ending after 1989. The study would be due April 1, 1990.

3. Increase in the Special Minimum Benefit

Present Law

The special minimum benefit is designed to provide to workers who have many years of work at low wages a minimum social security benefit. The special minimum benefit is computed by multiplying the number of years of coverage earned by the individual toward the special minimum, in excess of 10 and up to 30, by $9.00 for years before 1979 and by $11.50 for 1979 and after. For 1979 and later, the $11.50 is subject to cost-of-living adjustments.

An individual earns a year of coverage toward the special minimum for the years 1937-1950 by dividing the total amount of wages or self-employment income credited in those years by $900. However, the total number of years awarded cannot exceed 14 years. For 1951-1978, the individual earns a year of coverage for each year in which he or she has wages or self-employment income of at least 25 percent of the social security contribution and benefit base for that year and, for later years, at least 25 percent of the old-law contribution and benefit base for that year. The amount of earnings needed to acquire a year of coverage in 1989 is $8,925 (in 1990, it is projected to be $9,375).

Explanation of Provision

The provision would: (a) increase the special minimum benefit and (b) reduce the amount of wages needed to earn a year of coverage toward the special minimum.

The special minimum base amount, which is multiplied by the number of years of coverage earned by an individual to determine his or her special minimum benefit, would be increased in 1990 by $1.70. This would provide an individual who had acquired 30 years of coverage under the special minimum benefit and retired at age 65 in 1990 with a benefit increase of about $35 a month. Under the provision, such individual's benefit would be increased from $5,256 (which is 85 percent of the 1990 poverty level) to about $5,676 (which is 92 percent of the 1990 poverty level). As under current law, benefits for individuals with less than 30 years of coverage would be lower than benefits for those with the full 30 years.

The wages or self-employment income required to earn a year of coverage would be reduced from 25 percent of the old-law contribution and benefit base (projected to be $9,375 in 1990) to 15 percent of the old-law contribution and benefit base (projected to be $5,625 in 1990).

Because the minimum wage has not been increased since 1980 while the social security contribution and benefit base has been indexed to wage increases, the level of wages required to earn a year of coverage has exceeded the minimum wage in every year since

1983. The provision would make it possible once again for a minimum-wage earner to earn years of coverage toward the special minimum.

Finally, the provision would provide for continued medicaid eligibility for those individuals who might otherwise lose eligibility for medicaid as a result of this increase.

Effective Date

The provision would increase the special minimum benefit with respect to benefits for months after December, 1989., The provision reducing the amount of wages needed to earn a year of coverage would be effective for years of coverage earned after 1989.

4. Repeal of Retroactive Benefits for Certain Categories of Individuals

Present Law

Under present law, certain individuals are permitted to receive benefits for up to six months prior to their application for benefits if they were otherwise eligible for benefits for that period. In general, individuals who are eligible for actuarially reduced benefits are not eligible for retroactive benefits. There are, however, four categories of individuals eligible for reduced benefits who are eligible for retroactive benefits.

Explanation of Provision

The provision would eliminate eligibility for retroactive benefits for two of the categories of individuals eligible for reduced benefits: 1) those with dependents entitled to unreduced benefits and 2) those with pre-retirement earnings over the amount allowed under the retirement test who may use the retroactive benefits to charge off their excess earnings.

Effective Date

The provision would be effective with respect to applications for benefits filed on or after January 1, 1990.

5. Improvements in Social Security Administration Services and Beneficiary Protections

Current Law

a. Recovery of Overpayments - When an individual is paid more than the correct amount of title II benefits, the Secretary must attempt to recover the overpayment by:

(i) requiring the overpaid person or his estate to refund the amount,

(ii) decreasing any payment to which the individual is entitled,

(iii) decreasing any payment to his dependents or his estate, or

(iv) using any combination of these measures.

The requirement to repay an overpayment is waived in cases where the individual is without fault and recovery would (i) be against equity and good conscience or (ii) defeat the purpose of title II of the Social Security Act. By regulation, Social Security Administration (SSA) has interpreted "defeat the purpose of this title" to mean that overpayment is waived only if (i) the overpaid individual needs substantially all of his or her income to meet normal living expenses, and (ii) refund or adjustment of benefits would reduce the individual's assets below certain specified amounts.

b. SSA Telephone Service - SSA currently operates 37 Teleservice Centers (TSCs) which respond to inquiries from the public. These TSCs can access SSA's beneficiary computer files and can schedule appointments at local offices throughout the country. In October 1988, a number of TSCs were integrated into a toll-free telephone network which covers 60 percent of the population. In October 1989, toll-free service will be extended via all 37 TSCs to the entire country. At the same time, direct telephone access to SSA's local field offices will be terminated, so that the public will no longer be able to call these offices directly.

c. Correction of Earnings Records - The Secretary is required to establish and maintain records of wages and self-employment income paid to workers and of periods during which these payments are made. The Secretary can correct errors in these records at any time up to three years, three months, and fifteen days after the year in which the wages were paid or self-employment income was derived.

After this time limit has passed, only specified types of corrections can be made. These include:

(i) corrections of entries established through fraud,

(ii) corrections of clerical or mechanical errors,

(iii) corrections to make records conform to an employer or self-employment tax return,

(iv) corrections of misallocations of wages among workers or over time periods, and

(v) corrections to add wage entries to records in cases where an employer paid wages to an employee but did not report them to the Secretary.

In cases where the Secretary finds that an employer has under-reported wages for an employee, this fifth exception does not permit his wage record to be corrected after the statutory time limit.

d. Standards Applicable in Determinations of Fault, Good Faith, and Good Cause

(i) Fault - When the Secretary finds that an individual has been paid more than the correct amount of title II benefits, he must attempt to recover the overpayment, as described in (a), above. However, the requirement to repay an overpayment is waived in cases where the individual is without fault and recovery would either be against equity and good conscience or defeat the purpose of title II of the Social Security Act. The SSA regulations require that in determining whether an individual was "without fault", consideration be given to his age, intelligence, education, and physical and mental capabilities.

(ii) Good Faith - A disability insurance beneficiary whom the Secretary determines is no longer disabled has the option of having his or her benefits continued through a hearing before an Administrative Law Judge (ALJ). Benefits paid during this period are considered overpayments if the individual loses the appeal and are subject to recovery by the Secretary. However, if the individual acted in good faith in pursuing the appeal, repayment of the benefits can be waived, as described in (i), above. SSA regulations establish a presumption that appeals are made in good faith unless the individual fails to cooperate with the agency during the appeal (for example, fails to provide requested medical information).

(iii) Good Cause - Title II beneficiaries who:

- work for more than 45 hours during a month in non-covered employment outside the United States,
- cease to have a dependent child in care, or
- have earnings in excess of the annual exempt amount under the retirement test

are subject to penalties for failure to report these facts to SSA. However, if the individual can demonstrate to the satisfaction of the Secretary that he had good cause for failing to make a timely report, these penalties are waived.

In addition, disability benefits are terminated when a beneficiary fails, without good cause, to cooperate with SSA in reviewing his entitlement to benefits or in following a treatment which is expected to restore his ability to work.

e. Homeless Outreach - In some areas of the country, SSA has participated in projects designed to assist homeless individuals in qualifying for social security benefits. The law is silent regarding SSA's responsibilities to potentially eligible homeless persons.

f. General Notice Requirements - The Secretary must use understandable language in notifying individuals of a denial of disability benefits. The law is silent regarding other notices.

g. Notices to the Blind - Blind individuals who apply for or receive Supplemental Security Income (SSI) may opt to:

(i) be informed by telephone within five days of the mailing of a written notice of any decision, determination, or other action taken by the Secretary which affects them,

(ii) receive written notices of such decisions, determinations, or actions by certified letter, or

(iii) receive such notifications through some alternative procedure established by the Secretary.

These options are not available to blind individuals who apply for or receive title II benefits.

h. Representation of Claimants - SSA currently requires that applicants who wish to be represented by an attorney or other individual sign an "appointment of representative" form designating a legal representative. When this form is completed and placed in the individual's claim file, the agency will deal directly with the representative on matters relating to the applicant's claim. In the process of an appeal, SSA frequently moves a claimant's file from a local office to a state disability determination service or to an SSA Office of Hearings and Appeals. Without the file, and the appointment of representative form that it contains, local offices sometimes refuse to do business with the claimant's representative.

In addition, current law does not require the Secretary to provide claimants with information on how to obtain legal counsel in appealing an agency decision.

i. Appeals Versus Reapplications - If a claimant for disability benefits successfully appeals an adverse determination by the Secretary, benefits are paid retroactive to the date on which the Secretary determines that his disability began. If, however, instead of appealing, the claimant reapplies and is subsequently found to be disabled, he will not receive such retroactive benefits. Specifically, upon reapplication, he is barred from receiving benefits based on the doctrine of res judicata, which asserts the finality of administrative decisions for the period prior to the first denial. Thus, even if the individual reapplies and is found to be disabled, he will not be able to receive retroactive benefits for the period covered by his original application.

Furthermore, the decision to reapply rather than appeal can also lead to outright denial of benefits. This can happen as a result of the way in which the recency-of-work test affects a new application. This test requires that an applicant have a specified minimum number of quarters of social security coverage in the period immediately preceding his established onset of disability. In cases where an individual reapplies rather than appealing, SSA cannot determine that his disability began earlier than the date of the previous denial, irrespective of the actual history of the disability. This postponement of the established date of onset of disability may reduce the number of quarters a disabled person has worked in the immediately preceding period. If the number of quarters in this period falls below the minimum required (generally 20 out of 40), the individual will be found ineligible for benefits without regard to his physical condition.

Prior to May 1989, SSA's standard denial notice informed claimants that they could reapply for benefits at any time, without explaining the adverse consequences of reapplying versus appealing a denial. A May 1989 modification of this notice includes a statement that the decision to reapply rather than to appeal can result in a loss of benefits. However, this modified notice does not explain that an individual who reapplies rather than appealing may also become entirely ineligible for benefits due to his subsequent inability to satisfy the recency-of-work test.

j. Misinformation Given to Prospective Applicants by SSA Workers - When an individual contacts SSA by telephone and expresses an intention to apply for benefits, the worker with whom he speaks establishes a protective application at the time of the call. The requirement for a protective filing date in this circumstance is provided in SSA's Program Operations Manual Systems (POMS). If the individual subsequently qualifies for benefits, this procedure enables him to receive payments retroactive to the date on which he first contacted SSA. (When an individual is eligible for additional retroactive benefits for some period -- i.e., benefits beginning with the onset of a disability -- this retroactive period is established by counting backward from the protective filing date).

When an individual does not express an interest in applying for benefits because an SSA worker incorrectly informs him that he is not eligible for benefits, SSA will not assign him a protective filing date. As a result, if the individual qualifies for benefits upon subsequent application, he will be unable to receive benefits retroactive to the date that SSA discouraged him from filing by providing him with incorrect information.

k. Interviews on Time-Sensitive Transactions - Current law contains no requirement that SSA offices respond promptly to individuals who visit them on matters of personal financial urgency or under time deadlines imposed by the agency.

Explanation of Provision

The provision would establish an additional set of protections for title II claimants and beneficiaries, as well as codifying certain procedural safeguards in order to ensure more national uniformity in their application.

a. Recovery of Overpayments - Except in cases involving fraud, concealment, or willful misrepresentation, the Secretary would be required to recover title II overpayments on a schedule that would not cause a beneficiary undue financial hardship. Further, in cases where a title II beneficiary is also receiving SSI, title II overpayments would be recovered by withholding an amount equal to 10 percent of his title II benefit.

b. SSA Telephone Service - The Secretary would be required to carry out demonstration projects testing a set of accountability procedures in at least three teleservice centers. These procedures are intended to assure that individuals who conduct business with the agency via telephone are not disadvantaged, either as a result of receiving incorrect information or from their inability to document their own actions and requests. Under these procedures, callers would be provided with written confirmation of the date and nature of their telephone communication with the agency. This confirmation would include the name of the SSA employee with whom the caller spoke, a description of any action that the employee said would be taken in response to the call, and any advice which the caller was given. SSA would be required to maintain a copy of this confirmation for a minimum of five years following the termination of the demonstration projects.

Routine telephone communication would be excluded from these requirements. Thus, callers making inquiries which do not relate to potential or current entitlement or eligibility for benefits -- i.e., questions about the location or hours of operation of local offices or a notification of change of address -- would not be subject to the accountability procedures described above.

The demonstration projects must begin within six months of enactment and continue for one to three years.

The Secretary would be required to issue periodic reports to the Committee on Ways and Means and the Committee on Finance on the demonstration projects. These reports would:

(i) assess the costs and benefits of the accountability procedures,

(ii) identify any major difficulties encountered in implementing the demonstration projects, and

(iii) assess the feasibility of implementing the accountability procedures nationally.

The first of these reports would cover the first six months of operation of the demonstration projects and would be submitted nine months after their inception. A final report would be submitted 90 days after the termination of the projects. (If the demonstration projects continued for more than one year, additional annual reports would also be required.)

c. Correction of Earnings Records - The current list of exceptions to the three year, three month, and fifteen day time limit for correcting erroneous earnings records would be expanded to allow the Secretary to add wages to records where an entry for an employer is present but incorrect. This additional authority would fill a gap in the Secretary's ability to correct errors in wage records after the expiration of the statutory time limit.

d. Standards Applicable in Determinations of Fault, Good Faith, and Good Cause - In making determinations of whether an individual:

(i) is without fault in causing an overpayment,

(ii) has acted in good faith in appealing a termination of his disability benefits,

(iii) has good cause for having failed to make a timely report of overseas work, of earnings above the retirement test exempt amount, or of ceasing to have a child in care, or

(iv) has good cause for having failed to participate in a reassessment of his disability or in a program of treatment,

the Secretary would be required to take into account any physical, mental, educational, or linguistic limitation that the individual has (including any lack of facility in the use of English). In the case of (iv) above, failure to cooperate in the reassessment of a disability or in a program of treatment, the Subcommittee intends the Secretary to consider the individual's limitations only in relation to his understanding of the requirements being placed upon him, not as the basis for an exemption from the requirements themselves.

e. Assistance to the Homeless - The Secretary would be required to establish a program to identify homeless individuals who may be eligible for title II benefits and provide them with reasonable assistance and support in making application. In addition, upon a request from a state or local government or non-profit organization, the Secretary would be required to cooperate in a joint effort to facilitate benefit applications from homeless individuals. Such efforts would include regular visits to the primary night-time residences of homeless individuals, as well as to facilities which regularly provide meals to the homeless.

The Secretary would report annually to the Committee on Ways and Means and the Committee on Finance on the accomplishments of this outreach program.

f. General Notice Requirements - In issuing notices concerning title II benefits, the Secretary would be required to:

(i) use clear and simple language,

(ii) in notices generated by SSA local offices, include the name, address and telephone number of a responsible contact person,

(iii) in notices generated by SSA central offices, include the name and address of the local office which serves the recipient of the notice and a telephone number through which that office can be reached.

In addition, the Secretary would be required to issue a report to the Committee on Ways and Means and the Committee on Finance on (i) its current procedures for providing notices in foreign languages, and (ii) options for expanding the use of foreign language notices to individuals who have limited capacity to communicate with the agency in English.

g. Notices to the Blind - Blind individuals who apply for or receive title II disability benefits would have the option to:

(i) be informed by telephone of any decision, determination, or other action affecting them taken by the Secretary within five days of the mailing of a written notice,

(ii) receive written notices of such decisions, determinations or actions by certified letter, or

(iii) receive such notices through some alternative procedure established by the Secretary.

These requirements parallel current notice requirements for blind SSI recipients.

h. Representation of Claimants - The Secretary would be required to maintain an up-to-date electronic record, accessible to SSA field offices through the agency's computer system, of the identities of the legal representatives of all claimants for title II benefits. This requirement is intended to facilitate cooperation between local field offices and claimants' attorneys at times when the claimant's file, and the appointment of representative form contained in it, are not physically present in the office.

The Secretary would also be required to include in benefit denial notices information on options for obtaining legal representation in an appeal before the agency. This information would include reference to legal service organizations which provide assistance free-of-charge to qualified claimants.

i. Reapplication Versus Appeal - When an applicant can demonstrate that he failed to appeal an adverse decision because he relied on incorrect, incomplete, or misleading information provided by SSA, his failure to appeal could not serve as the basis for denial by the Secretary of a second application for title II benefits for any period.

The Secretary would be required to include in all notices of denial of title II benefits a clear, simple description of the effect on possible entitlement to benefits of reapplying rather than making an appeal.

j. Misinformation Given to Prospective Title II Applicants by SSA Workers - When an individual can demonstrate to the satisfaction of the Secretary that he failed to apply for title II benefits because he received incorrect information from SSA concerning his eligibility, the individual would be deemed to have applied for benefits on the later of (i) the date on which the incorrect information was provided, or (ii) the date on which the individual met all requirements for entitlement to benefits.

k. Interviews on Time-Sensitive Transactions - When an individual visits a field office during its normal business hours because (i) he received a notice from SSA concerning title II benefits which included a time limit for a response, or (ii) his title II check was lost, stolen, or not received, the Secretary would be required to assure that the individual receives a face-to-face interview with an SSA employee concerning the matter before the close of the business day.

Effective Date

a. Recovery of Overpayments - The provision would apply to adjustments made, and recoveries obtained, on or after January 1, 1990.

b. SSA Telephone Service - The telephone demonstration projects required by the provision would be required to be initiated within six months of the date of enactment of this Act.

c. Correction of Earnings Records - The provision would be effective upon enactment.

d. Standards Applicable in Determinations of Fault, Good Faith, and Good Cause - The provision would apply to determinations made on or after January 1, 1990.

e. Assistance to the Homeless - The program of assistance to the homeless would be established no later than 180 days after the date of enactment of this Act.

f. General Notice Requirements - The provision would apply to notices issued on or after January 1, 1990. The required report on foreign language notices would be due July 1, 1990.

g. Notices to the Blind - The provision would apply to notices issued on or after January 1, 1990.

h. Representation of Claimants - The provision requiring an electronic list of claimants' legal representatives would be effective July 1, 1990; the provision requiring notification of options for legal representation would apply with respect to adverse determinations made on or after January 1, 1990.

i. Appeal Versus Reapplication - The provision would apply to adverse determinations made on or after January 1, 1990.

j. Misinformation Given to Prospective Title II Applicants by SSA Workers - The provision would apply to benefits for months after December, 1959.

k. Interviews on Time-Sensitive Requests - The provision would apply to visits to SSA field offices made on or after January 1, 1990.

6. Improvements in the Representative Payee System

Present Law

Under current law, the Secretary of Health and Human Services may appoint a relative or some other person (known as a "representative payee") to receive social security benefit payments on behalf of a beneficiary whenever it appears to the Secretary that the appointment of a representative payee would be in the best interest of the beneficiary.

The Secretary is required to investigate each individual applying to be a representative payee either prior to, or within 45 days after, the Secretary certifies payment of the benefit to that individual. Present law does not specify what shall be included in the investigation.

The Secretary is required to maintain a system of accountability monitoring under which each representative payee is required to report not less than annually regarding the use of the payments. The Secretary is required to review the reports and identify instances where payments are not being properly used.

Any individual convicted of a felony under section 208 or section 1632 of the Social Security Act may not be certified as a representative payee.

Explanation of Provision

a. Investigations of Representative Payee Applicants

During the investigation of the representative payee applicant, the Secretary would be required to: 1) require the representative payee applicant to submit documented proof of identity; 2) verify the social security account number or employer identification number of the representative payee applicant; 3) determine whether the representative payee applicant has been convicted of a social security felony under section 208 or section 1632 of the Social Security Act; and 4) determine whether the representative payee applicant had ever been dismissed as a representative payee for misuse of a beneficiary's funds. An individual who had been convicted of a felony under section 208 or section 1632 or dismissed as a representative payee for misuse of the benefit payment would not be permitted to be certified as a representative payee. The Secretary would be permitted to issue regulations under which an exemption from the prohibition against certification in the case of misuse would be granted on a case-by-case basis, if the exemption would be in the best interest of the beneficiary. However, the Subcommittee intends that the exemption would be granted only in rare instances.

The Secretary would be required to terminate payments to a representative payee where the Secretary found that the representative payee had misused the benefit payments, to maintain a list of those terminated for misuse as of July 1, 1990, and provide such list to local field offices. Under current SSA policy misuse is defined as converting benefit payments for personal use, or otherwise diverting the payments in bad faith with a reckless indifference to the welfare and interests of the beneficiary. The Subcommittee expects the Secretary to apply this definition under this provision.

Advocacy groups for the elderly and the Social Security Administration's (SSA's) own field representatives have testified before the Subcommittee on Social Security and the Subcommittee on Human Resources regarding the lack of a meaningful investigation of representative payee applicants by SSA. For this reason, the Subcommittee feels it necessary to place minimum requirements for the investigation of representative payee applicants in statute. In addition, the Subcommittee expects SSA to monitor more closely local field office compliance with policy set forth in its Procedures and Operations Manual Systems (POMS) when determining an individual's need for a representative payee as well as when determining which representative payee applicant is best suited to serve as representative payee for an individual.

The Secretary would be required to maintain a centralized, current file readily retrievable by all local SSA offices of: 1) the address and social security account number (or employer identification number) of each representative payee; and 2) the address and social security account number of each beneficiary for whom each representative payee is providing services as representative payee. In addition, local services offices would be required to maintain a list of all public agencies and community-based non-profit social service agencies qualified to serve as a representative payee in the area served by such office.

b. Withholding of Benefits

In cases where the Secretary is unable to find a representative payee, and the Secretary determined it to be in the best interest of the beneficiary to withhold direct payment to the beneficiary, the Secretary would be permitted to do so for up to 60 days. Not later than the expiration of the 60 day period, the Secretary would be required to begin direct payment to the beneficiary starting with the current month's benefit unless the beneficiary had been declared legally incompetent or was under age 15. Retroactive benefits would be withheld until a representative payee had been appointed or the Secretary determines a suitable representative payee could be found. Retroactive benefits would be paid over such period as the Secretary determines is in the best interest of the beneficiary.

It is not the intention of the Subcommittee to encourage SSA to withhold benefits from beneficiary whom the Secretary has determined to need a representative payee. The beneficiary should be paid directly if at all possible, especially if the beneficiary had been using the benefit payment to meet immediate needs such as shelter, food and clothing.

In addition, the Subcommittee does not wish SSA to view the 60 day withholding period as a routinely acceptable length of time in which to find a representative payee. The Subcommittee expects SSA to make every effort to find a qualified representative payee for an individual as quickly as possible.

c. High-Risk Representative Payees

The Secretary would be required to study and provide recommendations as to the feasibility and desirability of formulating stricter accounting requirements for all high-risk representative payees and providing for more stringent review of all accountings from such representative payees. The Secretary would be required to define as high-risk representative payees: 1) non-relative representative payees who do not live with the beneficiary; 2) those who serve as a representative payee for three or more beneficiaries and who are not related to such beneficiaries; and 3) any other group determined by the Secretary to be high-risk.

The purpose of the provision is to identify groups or individuals serving as representative payees who may be likely to misuse or improperly use benefit payments. In particular, the Subcommittee expects SSA to examine board and care operators, nursing homes, and individuals who are not related to the beneficiary. The provision does not apply to Federal or State governmental institutions.

d. Fee for Representative Payee Services

Community-based non-profit social service agencies which serve more than five beneficiaries, and are not creditors of the beneficiary, would be allowed to collect a fee from the beneficiary's social security payment for providing representative payee services. The maximum fee would be established in regulations by the Secretary and would be limited to expenses incurred in providing services to the beneficiary. Such fee could include both the direct cost of services as well as overhead costs.

The purpose of this provision is to provide representative payee services of last resort for those individuals for whom finding a volunteer representative payee is often difficult. Individuals who are mentally retarded, mentally ill, alcoholics or drug abusers are the most vulnerable members of society, yet in many cases, these individuals have no family members or friends to assist them.

In the past, SSA allowed certain community-based non-profit groups, such as those that provide guardian services to large numbers of the elderly and disabled, to receive a small fee for services, including overhead. SSA has discontinued this practice, citing a lack of statutory authority. The Subcommittee wishes to provide authority for a small, specific group of organizations to collect a fee for services. In no way does the Subcommittee intend to permit the proliferation of non-profit organizations instituted expressly for the purpose of providing representative payee services in order solely to obtain a fee.

The term "community-based, non-profit, social service agencies" means non-profit social service agencies which are representative of communities or significant segments of communities and regularly provide services for those in need. Guardian, Inc., of Calhoun County, Michigan, is an example of a non-profit organization which regularly provides representative payee services. The Salvation Army, Catholic Charities, and Lutheran Social Services are examples of agencies providing social services to the needy.

Qualified organizations which charge or collect, or make arrangements to charge or collect, a fee in excess of the maximum fee established by the Secretary, shall be guilty of a misdemeanor punishable by a fine not exceeding $500, or imprisonment not exceeding one year, or both.

Currently, SSA permits a representative payee to be reimbursed from the beneficiary's check for actual out-of-pocket expenses incurred on behalf of the beneficiary. These expenses include items such as stamps, envelopes, cab fare or long distance phone calls. It is the intention of the Subcommittee that such representative payees would continue to be reimbursed in this manner. The Subcommittee does not intend these representative payees to receive a fee for services.

e. Studies and Demonstration Projects

(i) The Secretary would be required to enter into demonstration arrangements with not fewer than two states under which the Secretary would send to such states a list of all addresses where OASDI and SSI benefit payments are received by more than five unrelated beneficiaries. The Secretary would be required to send the information to the agencies primarily responsible for regulating care facilities or for providing adult or child protective services in the participating states.

The purpose of this demonstration project is to determine whether providing such information to the state protective service agencies would be useful in locating unlicensed board and care homes.

(ii) The Secretary would be required to develop and implement demonstration projects, in not fewer than two states, whereby all representative payee applicants would be screened for past convictions through the Federal Bureau of Investigation's Interstate Identification Index.

The demonstration project would provide information needed to determine: 1) the percentage of representative payee applicants who had been convicted of felony or misdemeanor violations; 2) the type of representative payee applicant (if any) most likely to have a felony or misdemeanor conviction; 3) the suitability of individuals with prior convictions to serve as representative payees; and 4) the circumstances under which such applicants could be allowed to serve as representative payees.

The information obtained from this demonstration project would assist the Subcommittee in determining whether there is a need to screen all representative payee applicants for convictions or limit the criminal background checks to certain types of representative payee applicants.

Although under current law an individual convicted of a felony under section 208 or section 1632 of the Social Security Act may not serve as a representative payee, the Subcommittee has determined that SSA maintains no list of those convicted. As part of a demonstration project, the provision would require SSA to develop and maintain such a list and make it readily available to local field offices.

The Secretary would be required to report to the Committee on Ways and Means and the Committee on Finance concerning the demonstration projects, together with any recommendations, not later than July 1, 1991.

(iii) The Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Attorney General, would be required to study the feasibility of establishing and maintaining a list of the names and social security account numbers of those who have been convicted of social security check fraud violations under section 495 of title 18 of the U.S. Code. The study would also require the Secretary to consider the feasibility of providing such a list to the social security field offices in order to assist claims representatives in the investigation of representative payee applicants. The Secretary would be required to report the results of the study, together with any recommendations, to the Committee on Ways and Means and the Committee on Finance no later than July 1, 1990.

Law enforcement agencies do not report violations under section 495 of title 18 of the U.S. Code to either the SSA or the Health and Human Services Inspector General. As a result, SSA is often unaware of arrests and convictions of individuals for violations under this section and therefore fails to obtain restitution or prevent those convicted of such violations from serving as representative payee.

To obviate the need for law enforcement, the Subcommittee would require the Secretary to negotiate memoranda of understanding with the appropriate law enforcement agencies.

Effective Date

In general, the provisions would be effective July 1, 1990.

7. Payment of Benefits to a Child Adopted after a Parent's Entitlement to Retirement or Disability Benefits

Present Law

A child adopted before a worker becomes entitled to disability or retirement benefits is eligible for child's insurance benefits. A child (other than the worker's stepchild) adopted after a worker's entitlement is not eligible for social security benefits unless he or she was living with the worker, and dependent on the worker for half support, for the year prior to the worker's entitlement.

Explanation of Provision

A child adopted after a worker becomes entitled to retirement or disability benefits would be eligible for child's insurance benefits regardless of whether he or she was living with and dependent on the worker prior to the worker's entitlement.

Effective Date

The provision would be effective with respect to benefits payable for months after December, 1989, but only on the basis of applications filed on or after January 1, 1990.

8. Extension of Social Security Coverage Exemption for Members of Certain Religious Faiths

Present Law

Self-employed workers may claim an exemption from social security coverage if they are members of a religious sect or division that is conscientiously opposed to the acceptance of public or private insurance benefits, if they have waived all benefits under titles II and XVIII, and if the sect or division has been in existence since December 31, 1950, and provides for the care of its dependent members. In addition, in cases where a self-employed individual has employees and both employer and employee meet the conditions listed above, the employee may claim an exemption from social security coverage. This optional exemption applies to both the employer and employee portions of the social security tax.

Explanation of Provision

The religious exemption from social security coverage would be extended in two ways. First, it would be available to employees of partnerships in which each partner holds a religious exemption from social security coverage. Second, it would be available to workers in churches and church-controlled non-profit organizations who are treated as self-employed because the employing church or organization has exercised its option not to pay the employer portion of the social security tax. In both cases, the worker would be required to be a member of the religious sect or division in order to receive the exemption.

Effective Date

The first provision would be effective as if included in the Technical and Miscellaneous Revenue Act of 1988. The second would be effective for tax years beginning after January 1, 1990.

9. Creation of Work Incentives for Disabled Adult Children

Present Law

Disabled social security beneficiaries who attempt to work are provided with a trial work period of up to nine months, during which earnings cause no reduction in their benefits. By regulation, months which count toward completion of this trial work period are those in which a beneficiary earns $75 or more. If the Secretary determines that a beneficiary is engaging in Substantial Gainful Activity (SGA) in the month following completion of the trial work period, benefits are suspended two months later. (SGA is currently defined by regulation as earnings of $300 per month.)

At the end of the trial work period, individuals who continue to have a disabling impairment enter a 36-month Extended Period of Eligibility (EPE). During the last 33 of these 36 months, benefits can be paid for any month during which earnings drop below SGA without the need for a new application and disability determination.

For individuals who continue to have a disabling impairment, medicare coverage continues for a minimum of 39 months after the completion of a successful trial work period, or a minimum of three months past the end of the EPE.

Explanation of Provision

The provision would alter existing work incentives for Disabled Adult Children (DACs) by replacing the trial work period and EPE with a system of ongoing, partial benefit payments. Under this system, $85 in earnings plus impairment-related work expenses would be disregarded in determining a DAC's monthly benefit. For earnings which exceed these disregarded amounts, benefits would then be reduced by $1 for each additional $2 earned. This system of partial benefit payments would continue so long as the DAC's disabling impairment did not cease. Medicare coverage would continue for a minimum of 48 months past the first month in which the individual engages in SGA (i.e., under current regulations, has earnings which exceed $300 per month).

There are two reasons for this targeted change in the disability insurance (DI) program. First, the Subcommittee is concerned about the potential cost of an across-the-board change in DI work incentives. That is, by attracting disabled individuals who are now working to the DI rolls, a universal DI work incentive program could place heavy demands on the disability trust fund and, in the long run, pose a threat to the financial solvency of the program. Because DACs tend to be disabled from birth or early childhood, their rates of workforce participation are significantly lower than those for individuals who become disabled in later years. As a result, the establishment of a work incentive program for DACs is unlikely to attract to the DI rolls a significant number of additional disabled individuals who are now working but have not applied for DI benefits.

Second, were it not for their eligibility for DI benefits as a result of the death, disability, or retirement of a parent, many DACs would be eligible for Supplemental Security Income (SSI) and thereby eligible for the existing 1619 work incentive program under SSI. Thus, this provision would establish a work incentive for large numbers of individuals who are currently being barred from participation in the 1619 program by their title II eligibility.

In addition to applying to DACs' benefits, this system of partial benefit payments would apply to any social security benefits earned by DACs based on their own work effort.

Two groups of DACs, who would otherwise be disadvantaged by these changes, would be excluded from the change. These are: (1) DACs who are disabled by reason of blindness, and (2) those entitled to benefits in June of 1990 who have attempted to work but whose earnings have not reached SGA.

Effective Date

In general, the provision would be effective for benefits paid after June 1990. For DAC beneficiaries engaged in a period of trial work consisting of two or more consecutive months as of June, 1990, the provision would take effect beginning with the first month that follows this consecutive trial work period.

10. Continuation of Disability Benefits During Appeal

Present Law

A disability insurance (DI) beneficiary who is determined to be no longer disabled may appeal the determination sequentially through three appellate levels within the Social Security Administration (SSA): a reconsideration, usually conducted by the State Disability Determination Service that rendered the initial unfavorable determination; a hearing before an SSA administrative law judge (ALJ); and a review by a member of SSA's Appeals Council.

The beneficiary has the option of having his or her benefits continued through the hearing stage of appeal. If the earlier unfavorable determinations are upheld by the ALJ, the benefits are subject to recovery by the agency. (If an appeal is made in good faith, benefit repayment may be waived.) Medicare eligibility is also continued, but medicare benefits are not subject to recovery.

The Technical and Miscellaneous Revenue Act of 1988 extended this provision for one year. The Act authorized the payment of interim benefits to persons in the process of appealing termination decisions made on or before December 31, 1989. Such payments may continue through June 30, 1990 (i.e., through the July 1990 check).

Explanation of Provision

The provision would be made permanent. Thus, the beneficiary would have the option of having his or her DI and medicare benefits continued through the hearing stage of appeal. The DI benefits would be subject to recovery where the ALJ upheld the earlier unfavorable decision. The medicare benefits would not be subject to subsequent recovery.

Effective Date

The provision would be effective upon enactment.

11. Use of Social Security Number by Certain Legalized Aliens

Current Law

The use of a false social security number or social security card or the misreporting of social security covered earnings, with intent to deceive, is a felony under section 208 of the Social Security Act, punishable by a maximum penalty of up to $250,000 or up to 5 years imprisonment. The Immigration Reform and Control Act of 1986 (IRCA) extended amnesty and the opportunity to obtain legal status to certain illegal aliens who had been resident and working in the United States for a substantial period of time. However, persons legalized under IRCA are still subject to prosecution for use of a false social security number or card under section 208 of the Social Security Act. As a result, alien workers who are granted temporary or permanent legal resident status under IRCA, and who apply for a correct social security number or attempt to correct their earnings records with the Social Security Administration, may be subject to prosecution as a result of their previous use of a false number or card.

Explanation of Provision

The provision would amend the Social Security Act to provide that aliens, who under IRCA, applied for and were granted legal status would be deemed not to have violated certain criminal provisions of the Social Security Act, as described in section 208, by virtue of having used a false social security number or card or having misreported earnings with intent to deceive, during the period prior to, or within 30 days after enactment of this provision. The exemption would not apply to those who sold social security cards, possessed social security cards, possessed counterfeit social security cards with intent to sell or counterfeited social security cards with intent to sell.

The purpose of IRCA is to give most illegal aliens who had been long established in the United States (generally present since January 1, 1982) and who are contributing members of the society, an opportunity to become legal residents and lead normal lives. The use of false social security numbers was a common practice among illegal aliens attempting to work in the United States.

When this population was given amnesty from prosecution for violation of the immigration laws, the fact that they could still be prosecuted for use of a false social security number or card, even after obtaining temporary or permanent resident status, was not addressed. As a result, most of the legalized population is still technically subject to prosecution and loss of legal status as soon as they attempt to obtain a legal social security number, which is essential for work in the United States, and to correct their earnings records. Many aliens who have applied for or have been granted amnesty have not yet corrected their social security numbers for fear of prosecution under section 208.

The provision would make the Social Security Act consistent with the amnesty provisions of IRCA by providing amnesty from prosecution for use of false social security numbers during the period prior to, or within 30 days after, enactment of this provision.

Effective Date

The provision would be effective for fraudulent use which occurred prior to, or within 30 days after enactment.

12. Prohibition of Termination of Coverage of U.S. Citizens and Residents Employed Abroad by a Foreign Affiliate of an American Employer

Present Law

U.S. citizens and residents employed abroad by a foreign affiliate of an American employer are covered by social security at the option of the American employer through an agreement between the American employer and the Secretary of the Treasury. The American employer can terminate this coverage by giving two years advance notice after the agreement has been in effect for at least eight years. The Social Security Amendments of 1983 prohibited states and non-profit organizations from terminating the social security protection of their employees, but failed to repeal the similar authority available to American employers whose foreign affiliates employ U.S. citizens and residents.

Explanation of Provision

American employers' option to terminate the social security coverage of workers in their foreign affiliates would be eliminated.

Effective Date

The provision would be effective with respect to any coverage agreement in effect on or after June 15, 1989, for which there is no notice of termination in effect on this date.

13. Repeal of Carryover Reduction in Retirement or Disability Insurance Benefits Due to Receipt of Widow(er)'s Benefits before Age 62

Present Law

If a widow(er) receives actuarially reduced benefits before age 62 and then applies for retirement or disability benefits, the new benefit is subject to a "carryover" reduction. This reduction reflects the fact that social security benefits were already being paid at a reduced rate before the beneficiary filed for retirement or disability benefits. The amount of the carryover reduction, which must be computed manually, is determined according to an unusually complex and error-prone formula. The widow(er) receives the retirement or disability benefit reduced by the carryover reduction, plus any additional widow(er)'s benefit necessary to bring the total benefit amount up to the level of the widow(er)'s benefit if it is larger than the retirement or disability benefit. Since the widow(er)'s benefit in most cases is larger than the retirement or disability benefit, the amount of the carryover reduction usually has no effect on the total benefit received.

Explanation of Provision

The widow's carryover reduction would be eliminated. That is, the retirement or disability benefit received by a widow(er) would not be subject to a carryover reduction because the beneficiary received widow(er)'s benefits before age 62, although the new retirement benefit would be subject to actuarial reduction if claimed before the normal retirement age.

Effective Date

In the case of retirement benefits, the provision would be effective for individuals who attain the age of 62 on or after January 1, 1990. In the case of disability benefits, the provision would be effective for individuals who attain the age of 62 and become disabled on or after January 1, 1990.

14. Statement of Trust Fund Liabilities in Trustees' Report

Present Law

The Trustees of the Old-Age and Survivors Insurance and Disability Insurance Trust Funds are required by law to report annually on the actuarial status of the funds. The annual report of the Trustees includes a statement of the present value of the income to, outgo from, and balance in the trust funds measured over periods of 25, 50 and 75 years, expressed as a percentage of payroll.

Explanation of Provision

The Trustees would be required to include in their report a statement of the income to, outgo from, and balance in the trust funds measured over periods of 25, 50 and 75 years, expressed both as a percent of payroll and in dollar amounts. The analysis would also include (1) the actuarial present value of expected future taxable payroll over each of the three periods, and (2) the present-value actuarial balance, expressed as a percent of the present value of future outgo. The present-value actuarial balance would be determined by adding the present value of the expected future income to the assets of the fund at the beginning of the measurement period and subtracting the present value of the expected future outgo.

The above requirement would result in a statement in the Trustees' report of the unfunded liabilities of the OASDI trust funds based upon an "open group" analysis of the funds, expressed both in terms of percent of payroll and in dollars.

An "open group" analysis is based on the assumption that future workers will be covered by the program as they enter the labor force. The Subcommittee has required the Trustees to provide an "open group" analysis because the Subcommittee believes that a "closed group" analysis, which is based on the assumption that no workers would be covered in the future other than those who are age 15 or over at the beginning of the measurement period, does not reflect the basis on which the OASDI program is financed.

Effective Date

The provision would be effective for annual reports of the Trustees beginning with the 1990 report.

15. Inclusion of Employer Cost of Group-Term Life Insurance in Compensation under the Railroad Retirement Tax Act

Present Law

The Federal Insurance Contributions Act (FICA), which applies to the Old-Age, Survivors and Disability Insurance program, and the Railroad Retirement Tax Act (RRTA), which applies to the railroad retirement program, both define which types of remuneration are to be considered "wages" or "compensation" under the respective acts and therefore are to be subject to payroll taxes.

Under FICA, employer-paid premiums for life insurance are generally excluded from the definition of wages, except for the value of employer-paid premiums for group-term life insurance coverage in excess of $50,000, which is included in the definition of wages and thus is subject to payroll taxes. RRTA makes no reference to life insurance in its definition of compensation. However, the Internal Revenue Service (IRS) regulations provide for the exclusion of life insurance premiums generally under RRTA. This exclusion has been interpreted to extend to the value of employer-paid premiums for group-term life insurance coverage in excess of $50,000. Thus, railroad retirement payroll taxes are not imposed on these premiums.

Explanation of Provision

The value of employer-paid premiums for group-term life insurance coverage in excess of $50,000 would be included in the definition of compensation under RRTA and would therefore be subject to railroad retirement payroll taxes. Because RRTA does not specifically refer to life insurance, it would also be amended to generally exclude from the definition of compensation the value of employer-paid life insurance premiums. In this way, the definitions of compensation under RRTA and wages under FICA would be brought into conformity with respect to the treatment of life insurance.

Effective Date

The provision would be effective with respect to coverage in effect after December 31, 1989, except in the case of former employees who separated from employment on or before December 31, 1989. The Subcommittee does not wish the passage of this provision to imply that employers who withheld and paid payroll taxes on remuneration paid before January 1, 1990, based on an interpretation of the law in conformity with this provision, are entitled to a refund of such taxes paid.

16. Inclusion of Deferred Compensation Arrangements, Including 401(k) Plans, in Compensation under the Railroad Retirement Tax Act

Present Law

Under the Federal Insurance Contributions Act (FICA), which pertains to social security, employer-sponsored tax-qualified pension plans are generally excluded from the definition of wages under the act and thus are not subject to FICA taxation. There are two exceptions to this general exclusion.

The first exception is for qualified cash or deferred arrangements (described in section 401(k) of the Internal Revenue Code). Under a cash or deferred arrangement forming a part of a qualified profit-sharing or stock bonus plan, a covered employee may elect either to have the employer contribute an amount to the plan on the employee's behalf or to receive such amount directly in cash. Amounts contributed to the plan pursuant to the election are treated as employer contributions. These amounts are includible as wages and are subject to FICA taxation.

The second exception is for deferred compensation plans other than those specifically provided for in the general exclusion for tax-qualified pension plans. They are referred to as "nonqualified deferred compensation plans". Amounts contributed to these types of plans are includible as wages. They are subject to FICA taxation when the services are performed or when there is no substantial risk of forfeiture of the rights to such amounts, whichever is later.

The Railroad Retirement Tax Act (RRTA) does not refer to either pensions or deferred compensation arrangements in its definition of compensation subject to payroll taxation. Consequently, no taxes are imposed on contributions to 401(k) plans or on deferrals made under other deferred compensation arrangements.

Explanation of Provision

RRTA would be amended to bring the treatment of deferred compensation arrangements, and pensions generally, into conformity with their treatment under FICA. That is, employer-sponsored tax-qualified pensions would be specifically excluded from the definition of compensation under RRTA and would therefore not be subject to railroad retirement payroll taxes. However, contributions to qualified 401(k) cash or deferred arrangements and contributions to nonqualified deferred compensation plans would both be included in compensation (and would therefore be subject to railroad retirement payroll taxes) to the same extent they are now included in wages for FICA tax purposes.

Effective Date

With respect to pensions generally, the provision would be effective for remuneration paid after December 31, 1989. With respect to deferred compensation arrangements, the provision would be effective for remuneration paid after December 31, 1989, (including remuneration paid after December 31, 1989, which is for services performed before January 1, 1990) with the following two exceptions: 1) with respect to qualified 401(k) cash or deferred arrangements, a transition rule is provided to exclude certain remuneration paid after December 31, 1989, if paid pursuant to certain elective deferrals made before January 1, 1990; and 2) in the case of certain agreements in existence on June 15, 1989, between a nonqualified deferred compensation plan and an individual, the provision would only apply to services performed after December 31, 1989. The Subcommittee does not wish the passage of this provision to imply that employers who withheld and paid payroll taxes on deferred compensation paid before January 1, 1990, based on an interpretation of the law in conformity with this provision, are entitled to a refund of such taxes paid.

17. Codification of the Rowan Decision with Respect to Railroad Retirement

Present Law

In a 1981 case, Rowan Companies, Inc. v. United States, the Supreme Court ruled that the definition of "wages" for Federal Insurance Contributions Act (FICA) purposes must be interpreted in regulations in the same manner as for income-tax withholding purposes. At issue in Rowan Companies, Inc. was the treatment of meals and lodging provided for the convenience of the employer. The 1983 Social Security Act Amendments codified the Court's decision with respect to meals and lodging, but in all other cases stated that nothing in the regulations prescribed for the purposes of income tax withholding which provides an exclusion from "wages" shall be construed to require a similar exclusion from "wages" in the regulations prescribed for the purposes of FICA. Similar language was not included in the Railroad Retirement Tax Act (RRTA).

Explanation of Provision

RRTA would be amended to state that, except in the case of meals and lodging provided for the convenience of the employer and excludible for the purposes of income tax withholding, nothing in the regulations prescribed for the purposes of income tax withholding which provides an exclusion from "wages" shall be construed to require a similar exclusion from "compensation" in the regulations prescribed for the purposes of RRTA.

Effective Date

The provision would be effective for remuneration paid after December 31, 1989.

18. Recovery of Overpayments from Former Social Security Beneficiaries

Present Law

A federal agency that is owed a past-due, legally enforceable debt, other than a title II overpayment, can collect it by having the Internal Revenue Service (IRS) withhold or reduce the debtor's income tax refund. To obtain repayment via a tax refund offset, the agency to which the debt is owed must:

(i) notify the individual of its intention to recover the debt through the tax system,

(ii) provide the individual with at least 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable, and

(iii) consider any evidence presented by the individual and make a final determination that the debt is in fact owed and legally enforceable.

After the agency notifies the IRS of its final determination, the IRS reduces the amount of the individual's income tax refund, if any; pays this amount to the agency; and notifies the individual of the amount by which his tax refund has been reduced to repay his debt.

Explanation of Provision

The prohibition against recovering title II overpayments via a tax refund offset would be eliminated for former beneficiaries. (Current beneficiaries would continue to be exempt from the tax refund offset program.)

After being informed by the Social Security Administration (SSA) of its intention to recover an overpayment via a tax refund offset, former beneficiaries who have not previously applied to SSA for a waiver of the overpayment could do so. In addition, the IRS would be required to establish a procedure by which a spouse could prevent his or her share of a joint tax refund from being withheld in an overpayment recovery action. The IRS must also notify individuals who filed joint returns of this procedure when it informs them that it is withholding their tax refund.

The Subcommittee intends that SSA implement this provision expeditiously so that it can take effect for tax year 1989. The Subcommittee hopes that SSA will begin preparing for implementation by determining what information the IRS needs in order to make the tax refund offset program for title II overpayments operational before the end of this calendar year.

Effective Date

The provision would take effect January 1, 1990.

19. Preeffectuation Review of Favorable Decisions by the Social Security Administration

Present Law

The Social Security Disability Amendments of 1980 require the Secretary of Health and Human Services (HHS) to review 65 percent of favorable title II decisions made by State Disability Determination Services (DDSs) each year prior to their effectuation. The review applies to favorable decisions on initial claims, on reconsiderations, and on continuing disability investigations. At Social Security Administration's (SSA's) current volume of applications and appeals, the agency is required to conduct about 450,000 preeffectuation reviews annually.

The Committee on Ways and Means approved the 65 percent requirement in 1980 as a means of promoting uniformity and accuracy in favorable disability decisions. At that time, the Committee on Ways and Means noted that:

> "...in some instances reviewing this percentage of cases may not be cost effective -- a lower or higher percentage may be prudent. If the Secretary finds this to be the case, we would expect him to report his findings to [the] Committee in an expeditious manner." (H. Rept. 96-100, p. 10)

Explanation of Provision

The percentage of favorable state agency decisions that the Secretary must review would be reduced from 65 percent across-the-board to 50 percent of allowances and 25 percent of continuances. The 50 percent requirement would apply to both initial allowances and allowances upon reconsideration. To the extent feasible, the reviews would focus on allowances and continuances that are likely to be incorrect.

Since 1981, the Secretary has offered several proposals for reducing the preeffectuation review requirement. The Subcommittee's approval of this reduction is based on a recognition of SSA's enhanced capacity, compared with 1980, to identify the general types of approvals and continuances that are most likely to be incorrect. Given this enhanced capacity, the Subcommittee believes that it is possible to maintain current levels of accuracy, and possibly even to improve upon them, by targeting preeffectuation reviews on error-prone cases. The Subcommittee intends to monitor SSA's implementation of this reduced requirement carefully to assure that accuracy levels do not deteriorate as a result of its enactment.

Effective Date

The provision would apply to reviews of state agency determinations made after fiscal year 1989.

SUBCOMMITTEE ON HUMAN RESOURCES

I. CHILDREN'S INITIATIVE

A. CHILD CARE AND THE WORKING POOR

1. Increase Funding for the Title XX Social Services Block Grant

CURRENT LAW:

Under Title XX of the Social Security Act States are entitled to receive social services block grant funds. These funds must be used to provide services directed at achieving five national goals: preventing or reducing dependency; achieving self-sufficiency; preventing or remedying neglect, abuse or exploitation of children and adults; preventing or reducing inappropriate institutional care; and providing services or referrals to individuals in institutions.

Title XX is a capped entitlement; funds are currently limited to $2.7 billion annually. Nearly all States use Title XX funds to provide child care assistance to needy families.

PROPOSAL:

To provide additional resources for child care and training of child care providers, the entitlement ceiling for the Title XX social services block grant would be increased as follows: $2.9 billion in fiscal year 1991; $3.1 billion in fiscal year 1992; and $3.3 billion in fiscal year 1993 and thereafter. As is the case for all Title XX funds, no part of these funds is earmarked for any specific purpose.

EFFECTIVE DATE:

On enactment

2. Sense of the Subcommittee Resolution on Child Care and Working Poor Issues

The Subcommittee on Human Resources has proposed an increase in the Title XX social services block grant as one component of a comprehensive initiative to address the problems of the working poor. Most States use a portion of their Title XX funds to offset child care expenses of working poor families. This expansion will allow more families to be served within a well-tested and experienced system of delivery.

The Subcommittee on Human Resources recommends that in considering child care proposals and other suggestions for reducing the tax burden of the working poor, the full Committee on Ways and Means consider an expansion of the earned income tax credit (EITC) rather than creating a new credit as proposed by President Bush. The Subcommittee believes that the goals of the Bush proposal can be fully achieved through the earned income tax credit, an approach that will be simpler to administer and more understandable for taxpayers. Such an expansion should include adjustment for family size; we would recommend three such adjustments.

The Subcommittee further recommends that the full Committee consider making the dependent care tax credit refundable as proposed by President Bush. This will assure that the poorest of working families who have child care expenses have access to the dependent care tax credit currently available only to wealthier families. In addition, families should not have to choose between receiving the dependent care tax credit or an expanded EITC. Both should be available to them as under current law.

The Subcommittee believes that this combination of tax credits and a Title XX expansion will reward work by substantially lowering the tax burdens of working poor families as well as provide significant assistance to these families with their child care expenses.

B. Foster Care and Child Welfare Amendments

1. Increase in Child Welfare Authorization

CURRENT LAW:

Title IV-B of the Social Security Act authorizes the appropriation of Federal funds for child welfare services. These funds can be used for preventing or remedying neglect and abuse, preventing the separation of children from their families, reunifying families, placing children for adoption, and assuring adequate care for children in out-of-home placements. The authorization level for the Title IV-B child welfare services program is $266 million per fiscal year.

PROPOSAL:

Permanently increase the authorization level of the Title IV-B child welfare services program from $266 million to $400 million.

EFFECTIVE DATE:

October 1, 1989

2. Extension of Authority to Transfer Foster Care Funds

CURRENT LAW:

Mandatory State-by-State ceilings are placed on foster care funds if the Federal appropriation for child welfare services reaches a specified trigger level, currently $266 million. In the absence of a mandatory foster care ceiling, States may elect to operate under a voluntary ceiling. A State may use one of several methods to calculate the most favorable ceiling.

The ceiling is intended to create financial incentives for States to reduce unnecessary placement or extended placement in foster care. Whenever a mandatory ceiling is in effect, a State may, having met certain requirements intended to protect children in foster care, transfer all of its unused foster care funds to its child welfare services program. (Any funds within the ceiling amount not expended by the State for foster care are considered unused foster care funds.) Under a voluntary ceiling, a State may transfer a portion of its unused foster care funds. However, the amount transferred, together with the State's IV-B allocation, may not exceed what the State would have received if the child welfare services appropriation had triggered the ceiling (i.e., currently $266 million).

The foster care ceilings and the authority to transfer foster care funds to child welfare services expire September 30, 1989.

PROPOSAL:

Extend the foster care ceilings and the authority to transfer foster care funds to child welfare services for three years, through September 30, 1992.

Permanently increase the Title IV-B child welfare services appropriations level at which a mandatory foster care ceiling is triggered from $266 million to $400 million.

EFFECTIVE DATE:

October 1, 1989

3. Requirement for State Report to Courts on Preventive Services

CURRENT LAW:

Public Law 96-272, the Adoption Assistance and Child Welfare Amendments of 1980, contained several court-related provisions requiring that, as a precondition for State receipt of certain Federal funds, courts take specific steps in legal proceedings involving children.

Among other court-related provisions, States may not make foster care maintenance payments with respect to a child, except in the case of a voluntary arrangement, unless there is a judicial determination that continuation in the home would be detrimental to the welfare of the child, and that reasonable efforts have been made to prevent or eliminate the need for removal of the child from his or her home.

In the case of any child removed pursuant to a voluntary agreement, Federal payments may not be made for a period in excess of 180 days, unless there has been a judicial determination that the placement is in the best interests of the child. The status of every Title IV-E foster child must be reviewed at least every six months by either a court or by administrative review to determine the continuing appropriateness of the placement and the extent of progress made toward alleviating or mitigating the causes necessitating placement in foster care.

Additionally, in order to certify compliance with the requirements of section 427, a State must, among other requirements, review the status of **every foster child under the care of the State** at least every six months by either court or administrative review and, no later than eighteen months after the original placement, and periodically thereafter, each child must be assured a dispositional hearing in a court of competent jurisdiction or by an administrative body appointed by the court to determine the future status of the child and whether certain procedural safeguards should be applied.

Currently, State child welfare agencies are not required to provide information to the courts, in order to assist them in carrying out their child welfare services functions (in particular, determining whether reasonable efforts have been made to prevent or eliminate the need for removal of a child from the home), on preventive placement and other services available in the State designed to prevent or eliminate the need for removal of a child from the home, or, subsequent to removal, alleviate or mitigate the causes necessitating placement in foster care.

PROPOSAL:

Effective beginning fiscal year 1990, require that the State child welfare agency compile on an annual basis a detailed report which specifies which preplacement preventive and reunification programs and services are operating and available to children and families in need in the State.

The report would include the following information: the name of the program and the administering agency or organization, the number of persons the program is capable of serving at any given time, a description of program services, a description of eligibility for the services, and the location of services, as of August of the fiscal year.

The information in the report would be arranged geographically to correspond with the relevant court jurisdictions. Require that by October 1 of the following fiscal year, a copy of the report must be provided to all judges and other judicial administrators, and all State agencies, involved in child protective services, and to the HHS Secretary. Require that the HHS Secretary publish an annual summary of the State reports by January 1.

EFFECTIVE DATE:

October 1, 1989

4. Increase Federal Reimbursement for Foster and Adoptive Parent Training

CURRENT LAW:

Federal matching funds for administrative expenditures for foster care and adoption assistance under Title IV-E are available at the rate of 50 percent. Current HHS regulations specify that foster and adoptive parents and staff of licensed or approved child care institutions providing foster care under Title IV-E are eligible for short-term training at the initiation of or during their provision of care, and that certain of the costs associated with such training (travel and per diem) may be reimbursed as administrative costs under Title IV-E.

PROPOSAL:

Effective beginning fiscal year 1990, allow Federal reimbursement for foster and adoptive parent training under Title IV-E at the rate of 75 percent. In addition to travel and per diem, reimbursable activities would include the short-term training of foster and adoptive parents and the staff of licensed or approved child care institutions providing Title IV-E foster care, in ways that increase their ability to provide support and assistance to Title IV-E foster and adopted children.

EFFECTIVE DATE:

October 1, 1989

5. Require Health and Education Records in the Child's Case Plan

CURRENT LAW:

Under present law, **for each child receiving foster care maintenance payments under the responsibility of the State**, a written case plan must be developed which includes a description of the home or institution in which the child is to be placed, a discussion of the appropriateness of the placement and a plan for assuring that the child receives proper care and that services are provided.

These case plans must be reviewed every six months by either a court or by administrative review to determine the continuing appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress made toward alleviating or mitigating the causes necessitating placement in foster care.

Additionally, in order to certify compliance with the requirements of section 427, a State must, in addition to other requirements, **for each child receiving foster care under the responsibility of the State**, have a written case plan and provide a case review system.

PROPOSAL:

Effective beginning fiscal year 1990, require that a foster child's case plan include a record of his educational and health status. The record must indicate the following information at the time of placement, to the extent the information exists and is accessible:

- -- the names and addresses of the child's health and educational providers,
- -- the child's grade level performance,
- -- the child's school record,
- -- assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement,
- -- a record of the child's immunizations,

- -- the child's known medical problems,
- -- the child's medications,
- -- in the case of a Medicaid-eligible foster child, an indication that the child has received, within 60 days of placement in foster care and periodically thereafter, comprehensive health examinations that are identical to the assessments which the State is currently required to provide under the Early and Periodic Screening Diagnosis and Treatment (EPSDT) program under Medicaid, as well as the results of the examinations and any follow-up treatment provided, and
- -- any other relevant health and education information concerning the child determined to be appropriate by the State agency.

The health and education record must be reviewed and updated at the time of each placement of a foster child in foster care.

The health and education record must be supplied to the foster parent or foster care provider with which the child is placed.

EFFECTIVE DATE:

October 1, 1989

6. Address the Special Problems of Adolescents

CURRENT LAW:

The Budget Reconciliation Act of 1985 established the independent living initiatives program, a State entitlement program under Title IV-E, to help States provide services in fiscal years 1987 and 1988 to facilitate the transition of Title IV-E foster children ages 16 and over to independent living. The Technical and Miscellaneous Revenue Act of 1988 extended the independent living program through fiscal year 1989, and expanded it to apply, at State option, to all children ages 16 and over in foster care, including those who are not receiving AFDC foster care payments. It was also expanded to apply for up to 6 months after foster care payments or foster care ends for children whose care or payments ended on or after they became age 16.

Independent living program services may include those that enable participants to seek a high school diploma or take part in vocational training; provide training in daily living skills, budgeting, locating housing and career planning; provide for counseling; coordinate services; establish outreach programs; and provide an independent living plan in the participant's case plan.

PROPOSAL:

Expand the purpose of the independent living program. The expanded program, called the Foster Care Adolescent Services Block Grant, would be authorized for three years beginning in fiscal year 1990. The program would provide special services to adolescents in foster care, including the independent living services currently authorized. States could expend unobligated prior year funds in any of the three fiscal years for which the program is authorized. The entitlement level of the program would be increased to $100 million annually.

In addition, at State option, eligibility for the program would be extended to youths in foster care who are the age of 10 or older. However, of the funds authorized for the Foster Care Adolescent Services Block Grant, each State would be required to expend at least 70 percent for independent living services for foster children ages 16 and older.

Payments under the program could be used to establish, extend and/or strengthen services and programs which focus on the increasingly complex needs of adolescents in foster care. In addition to independent living activities, such services and programs could include those which encourage and support school attendance, prevent alcohol and other drug abuse, increase access to mental health services and alcohol and drug abuse treatment, as well as other adolescent services determined to be appropriate by the State.

EFFECTIVE DATE:

October 1, 1989

7. Improve Data Collection

CURRENT LAW:

At the present time, HHS is not required to develop an annual report on Federal expenditures, services and participation under the various Title IV-E and Title IV-B child welfare, foster care and adoption programs. In addition, HHS does not collect and report comprehensive State-by-State data on the numbers, characteristics and status of children and families receiving Title IV-B and Title IV-E child welfare, foster care and adoption services and benefits, and of other children placed in foster care and adoption under the responsibility of the State child welfare agency.

In 1982, the Federal government provided funding, under a grant from the Office of Human Development Services, to the American Public Welfare Association (APWA) to administer a voluntary, annual reporting system for foster care and adoption. This reporting system is called the Voluntary Cooperative Information System (VCIS). According to a report by the Advisory Committee on Adoption and Foster Care Information (this Committee is described below):

> "While the VCIS deserves considerable credit for providing the most useful nationwide data on children in substitute care, the system is still subject to criticism. Not all States have provided reports over the years, reporting periods differ, common definitions and methodologies are lacking, and the nature of aggregate data limits the analyses that can be carried out."

The 1986 Budget Reconciliation Act included an amendment mandating certain studies and reports to Congress related to the feasibility of establishing a system for the collection of certain foster care and adoption data. The amendment, section 479 of the Social Security Act, required the Secretary of HHS to establish an Advisory Committee on Adoption and Foster Care Information. On October 1, 1987, the Advisory Committee submitted to the Congress the results of a study which identified the types of data necessary to assess on a continuing basis the incidence, characteristics and status of adoption and foster care.

On May 26, 1989, the Secretary of HHS submitted to Congress a report, due on July 1, 1988, proposing a method of establishing, administering and financing a system for the collection of data relating to adoption and foster care in the United States. HHS is next required to promulgate final regulations providing for the implementation of the information system, with the full implementation of the system no later than October 1, 1991.

PROPOSAL:

(a) New data requirements.-- Amend section 479 to require the collection of additional information on foster care and adoption, including:

o Separately for the Title IV-B child welfare services program, the Title IV-E foster care program, the Title IV-E adoption assistance program, and the Title IV-E Foster Care Adolescent Services Block Grant:

-- by State, a breakdown of total expenditures for the reporting period according to Federal dollars and State and local dollars;

-- by State, a breakdown of total Federal expenditures for the reporting period according to service categories established by the Secretary (taking into account those service categories defined in the VCIS data collection system, and those established by the Secretary pursuant to P.L. 100-485 for the Title XX program); and

-- by State, the number of persons during the reporting period (or average monthly number of persons, where appropriate) who received services, total and according to the service categories established by the Secretary;

o A State breakdown for the reporting period on transfers from the Title IV-E foster care program to the Title IV-B child welfare services program;

o Foster care ceilings (allotments) by State under the Title IV-E foster care program;

o The monthly rate of payment, by State, for foster care maintenance, including information on special rates of payment and information, by State, on the cost of providing foster care incurred by foster care providers with whom the State contracts to provide such care;

o Information by State regarding compliance with section 427 child welfare protections as of September 30 of the reporting period;

o Information on the date and result of all title IV-E and title IV-B HHS compliance reviews and fiscal reviews, and any other such reviews undertaken;

o Information for the reporting period regarding disallowances resulting from compliance and fiscal reviews, and any other such reviews undertaken; and

o Any other data the Secretary deems necessary to monitor the operations of the child welfare programs under titles IV-B and IV-E.

(b) Promulgation of Regulations.-- Require that no later than four months after the enactment of this legislation, the Secretary of HHS shall publish a notice of proposed rulemaking for the implementation of the data collection system required pursuant to section 479 of the Social Security Act, as amended, based on: the recommendations of the Advisory Committee on Adoption and Foster Care Information, the May 26, 1989 report of the Secretary to Congress required pursuant to section 479, and the Voluntary

Cooperative Information System. The public must have 60 days to comment on the proposed regulations. No later than four months after the close of the comment period, the HHS Secretary shall publish final regulations. The regulations must provide for the full implementation of the system no later than October 1, 1991.

(c) Timing of the Report.-- Require that the Secretary report, on an annual basis by the last day of the calendar year, the foster care and adoption information collected pursuant to section 479, as amended by this legislation. The data in the report would be based on the preceding Federal fiscal year. To the extent prior year data are available, require that it be included in the report. The annual report must include any explanatory text and notes necessary to interpret and evaluate the data included in the report. The first report would be due December 31, 1992.

(d) Interim Reports.-- Require that the Secretary prepare interim reports due December 31, 1990 and December 31, 1991. These reports would include any data required by section 479, as amended by this legislation, that the Secretary can reasonably and uniformly collect from the States.

(e) Child Abuse Data Collection.-- Require that the Secretary continue to collect and analyze aggregate and case - specific data on child abuse and neglect until the Secretary implements a new system for identifying and reporting on child abuse and neglect. At a minimum, the child abuse and neglect information must include the aggregate and case-specific data that have been voluntarily reported by the States and presented by the American Humane Association under contract with HHS. The child abuse and neglect reports must be issued at least biennially. The first report, containing 1987 and 1988 data, would be due no later than the end of calendar year 1990.

The Secretary of Health and Human Services should include in any report on the new system for child abuse and neglect data collection a plan for a mandatory, uniform, nationwide system for collection of State-by-State data on abuse and neglect among children in foster care and all other children.

This plan might include the following: the total number of abuse and neglect reports made to the States; the type and source of the report; the population characteristics of child protective services cases; the number of reports that were assigned for investigation and their final status; the caseload levels of employees by areas of specialization (i.e., telephone intake, investigations, in-home services, substitute care, and family services); and the recidivism of child abuse and neglect cases in foster care placements, nonplacements, and family reunifications.

EFFECTIVE DATE:

On enactment

8. Improve Oversight and Accountability

CURRENT LAW:

Public Law 96-272, the Adoption Assistance and Child Welfare Amendments of 1980, provided financial incentives to States to implement and operate a set of services and procedures designed to prevent the unnecessary removal of children from their home, prevent extended stays in foster care and ensure that efforts are made to reunify children with their families or place them for adoption. The services and procedures are outlined in section 427 of the Social Security Act.

In fiscal year 1981, HHS requested that States "self-certify" their compliance with the section 427 protections "on the basis of their understanding of the statutory requirements and an analysis of the related State child welfare programs, systems and policies implemented and in operation during the year for which they certified (HHS Section 427 Review Handbook, August 1988, p.1)." States which self-certified were to be reviewed later by the Department to ensure that they had actually implemented the section 427 protections.

According to the HHS Section 427 Review Handbook, to verify compliance with section 427 requirements, HHS conducts a two-stage review. The first stage is an administrative review which determines whether States have developed policy and procedures to implement the section 427 requirements for all children in foster care under the responsibility of the State. The second stage of the review is the case record survey which confirms that the policies are being implemented throughout the State.

An initial review is conducted for the fiscal year in which the State first certifies its eligibility. If a State meets the initial review, a subsequent review is conducted for the following fiscal year. States that meet the requirements of this subsequent review will be reviewed for the third fiscal year following the fiscal year for which the subsequent review was conducted. This is known as the triennial review. The case record survey must confirm the section 427 foster care protections are provided for at least 66% of the children in the initial review; 80% in the subsequent review; and 90% in the triennial review. If a State does not meet the established standards for the year under review, the review is conducted each succeeding year until eligibility is established.

Final regulations implementing section 427 became effective on June 22, 1983, three years after the passage of Public Law 96-272. According to an August 10, 1984 GAO report on implementation of the 1980 Act:

> "The final regulations largely restate the statute with little amplification to help states understand the inventory, statewide information system, or selected case review system requirements." (p. iii)
>
> "By not being precise in its regulations, states can make and have made varying interpretations of the act's requirements that are inconsistent with its legislative history....The confusion...is likely to continue in the absence of explicit HHS regulations for the states to follow on how to meet each of the act's requirements." (p. 21)

PROPOSAL:

(a) Development of New Review System.-- By March 1, 1990, the Secretary shall publish final rules which provide the specific, comprehensive set of standard criteria against which State programs will be uniformly measured for compliance with the section 427 protections.

Effective for any section 427 compliance review initiated for fiscal year 1991 or subsequent fiscal years, all HHS section 427 compliance review guidelines and all other materials used in the compliance review process, including instruments, methodology and forms, must conform to the revised regulations. In addition, no compliance review for fiscal year 1991 or later may be conducted using any guidelines and review materials that were revised less than six months prior to the beginning of the fiscal year under review.

(b) Review Timetable.-- No later than the beginning of fiscal year 1993, the Secretary shall have conducted a review of the State programs under the new review system and shall have determined, based on the published standards, whether the actual operation of the program in each State during the fiscal year reviewed conforms to the applicable section 427 requirements. Not less often than every three years (or not less often than annually in the case of any State which has been found in the most recent review to have been out of compliance) the Secretary shall conduct a complete review of the program in each State and determine, based on the published standards, whether the actual operation of the program during the fiscal year reviewed conforms to applicable section 427 requirements.

Any State which is found to be out of compliance with the requirements of section 427 under the new system must receive final notification of any finding of noncompliance within forty-five working days of the review. Such notification must include the basis for the finding of noncompliance.

A State which is found through a review under the new system not to be in full compliance with the requirements shall be determined to be in substantial compliance only if the Secretary determines that any noncompliance with the requirements is of a technical nature which does not adversely affect program performance. These terms must be defined in the regulations.

(c) Corrective Action Requirements.-- Any payments reduced or withheld as a result of a finding of noncompliance shall be suspended for any fiscal year, beginning with fiscal year 1991, if the State (1) submits a corrective action plan, within a period prescribed by the Secretary, which contains steps necessary to achieve substantial compliance within a time period prescribed by the Secretary, (2) the plan is approved by the Secretary, and (3) the Secretary finds that the corrective action plan is being fully implemented by the State and that the State is progressing in accordance with the timetable contained in the plan to achieve substantial compliance.

Under the new system, a suspension of the penalty shall continue until the Secretary determines that the State has achieved substantial compliance (in which case the penalty is not applied), the State is no longer implementing the corrective action plan (in which case the penalty is applied), or the State has implemented its plan but failed to achieve substantial compliance within the specified time period (in which case the penalty is applied).

(d) Treatment of Triennial Reviews Under Current Regulations.-- Effective June 9, 1989, the Secretary of HHS would be permanently precluded from reducing any payments to, seeking repayment from or withholding any payments from any State under Titles IV-B or IV-E of the Social Security Act, as a result of a disallowance determination made in connection with a triennial review (as established by and described in the HHS Section 427 Review Handbook) of State compliance with the foster care protections outlined in section 427 of the Social Security Act for any federal fiscal year preceding fiscal year 1991.

EFFECTIVE DATE:

On enactment

C. SSI DISABLED CHILDREN AMENDMENTS

1. Individual Functional Assessments of Children

CURRENT LAW:

A medically determinable physical or mental impairment of comparable severity to that which would be considered disabling for an adult is required for children under 18 years old to be determined disabled. A child must have an impairment that meets or equals in severity an impairment in the Listing of Impairments in the regulations. This listing consists of Parts A and B. Part B contains impairments of children under 18. These criteria are applied first. If these are not met, then Part A criteria are applied.

Under Part A, an adult must be unable to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last at least 12 months. If the severity of an adult's impairment does not meet or equal the severity of an impairment in the Listings, he can still be found disabled if his impairment prevents him from doing any substantial gainful work that exists in the national economy, considering his vocational factors (age, education and work experience). This vocational test is not applied to children because they have no significant work histories.

PROPOSAL:

Require the Secretary of HHS, in determining SSI eligibility for the blind or disabled, to assess individually each child's functional limits that interfere with the activities of daily living appropriate to the age of the child.

EFFECTIVE DATE:

October 1, 1989

2. Presumptive Disability Based on Genetic or Congenital Impairments for Children under 4 Years Old

CURRENT LAW:

Children born with genetic or congenital impairments must have impairments that meet or equal the severity of the impairments in the Listing of Impairments in regulations. Valid tests to determine this often are not available until the child reaches a certain age.

PROPOSAL:

Require the Secretary of HHS to presume disability for SSI of children under 4 years old who were born with genetic or congenital impairments that are likely to test positively for a disability later when medical professionals can administer a valid test at an older age. This presumption may be rebutted. Such impairments should include but not be limited to cystic fibrosis, Down's syndrome, junctional epidermolysis bullosa, Hirschprung's syndrome, Tourette syndrome, Prader Willi syndrome, and spina bifida.

EFFECTIVE DATE:

October 1, 1989

3. Revised Listings of Impairments for Children

a. Require Revised Listings of Impairments for Children

CURRENT LAW:

Current "Listings of Impairments for Children" were published in 1977 in response to congressional pressure to develop appropriate standards for evaluating impairments of children. Except for minor changes, the regulations have not been revised since 1977. The Listings exclude some childhood impairments, do not reflect current medical knowledge, do not describe associated functional limitations, and are not age-appropriate.

PROPOSAL:

Require the Secretary to solicit advice from childhood disability experts on changes that should be made to the children's "Listings of Impairments" so that they account for medical and functional rules that are appropriate to the age of the child. Require publication of proposed revisions for public comment within 18 months from the date of enactment. Regulations must be final 24 months after the date of enactment.

EFFECTIVE DATE:

Date of enactment

b. Secretary Required to Publish Notice of Proposed Rulemaking on Revised Childhood Listings of Mental Impairments

CURRENT LAW:

At the request of SSA, a work group of psychiatrists and other specialists in children's disabilities developed revised standards for determining SSI eligibility for children with mental impairments. The work group reported on April 1, 1986. Regulations implementing the standards have not been issued.

The revised standards developed by the work group include age-appropriate criteria for five age groups under age 18 in 11 categories of mental disorders. In each category, both "clinical signs and symptoms" and functional restrictions must be measured. The revisions reflect "the current state of the art and science where childhood mental impairments are concerned," according to the Mental Impairments Listing Workgroup.

PROPOSAL:

Require the Secretary of HHS to publish a notice of proposed rulemaking on the "Revised Childhood Listings of Mental Impairments" within 60 days after the date of enactment with final regulations issued nine months after enactment. The listings should be based on those submitted by the Mental Impairments Listing Workgroup of the Associate Commissioner for Disability on April 1, 1986.

EFFECTIVE DATE:

Date of enactment

4. Outreach Program for Disabled and Blind Children

CURRENT LAW:

Current law has no specific provision dealing with outreach programs. However, the Social Security Administration (SSA) conducts national, regional, and local outreach and public information campaigns to reach individuals who may be eligible for SSI. SSA is continuing to establish liaisons with national, State, and local legal and welfare agencies and advocacy groups to inform them about the SSI program and to enlist their assistance in finding potentially eligible persons.

PROPOSAL:

Establish a permanent SSI outreach program for disabled and blind children. Require the Secretary of Health and Human Services (HHS) to report annually on the effectiveness of this program. Require the Secretary to aim outreach efforts at populations for whom it would be most effective. Such efforts should include not only ongoing efforts to notify social security beneficiaries of possible eligibility for SSI, but other efforts aimed at those not receiving social security.

EFFECTIVE DATE:

Date of enactment

5. Eligibility for Recipients with Weekly or Biweekly Income

CURRENT LAW:

An individual's eligibility for SSI in a month is determined on the basis of the individual's income, resources and other relevant factors in such month. The income is determined based on a projection of income for that month. The projected income is reconciled in later months with actual income as it is reported.

The amount of the SSI benefit in a month is determined on the basis of income and other factors in the first, or if the Secretary determines, second month preceding such month. Generally, the Secretary uses income and other factors in the second preceding month to determine the SSI benefit amount.

Individuals who earn biweekly or weekly income will occasionally receive 3 or 5 paychecks in a month instead of the usual 2 or 4 paychecks. The extra income in these months can make such individuals ineligible for SSI and Medicaid in these months. Such individuals are placed in a suspension status for that month and usually resume receiving benefits in the next month. When SSI benefits are suspended, Medicaid is terminated.

PROPOSAL:

Require the Secretary to calculate average monthly income from projected annual income of persons receiving paychecks weekly or biweekly for the purpose of determining eligibility for SSI. This would eliminate the on-off-on again eligibility pattern experienced by these individuals when they receive an extra check. As a result, these individuals would be considered to be receiving SSI and would retain Medicaid during the month in which they received the extra paycheck.

EFFECTIVE DATE:

October 1, 1989

6. SSI Benefits for Disabled Children of Parents Who Work Overseas

CURRENT LAW:

SSI benefits are paid only to disabled children who live in the United States.

PROPOSAL:

Pay SSI benefits to disabled children who reside with parents working overseas. The child must be a U.S. citizen.

EFFECTIVE DATE:

October 1, 1989

7. Intergenerational Demonstration Project for Disabled Children

CURRENT LAW:

No provision.

PROPOSAL:

Authorize the Secretary of Health and Human Services to conduct demonstration projects in 10 communities. The demonstrations would test the use of volunteer senior aides to provide basic medical assistance and support to families with moderately or severely disabled or chronically ill children. The demonstration would determine the contribution of such voluntary assistance to the reduction of the costs of care for these children.

EFFECTIVE DATE:

October 1, 1989

D. CHILD SUPPORT ENFORCEMENT AMENDMENTS

1. Extension of IRS Intercept for Non-AFDC Families

CURRENT LAW:

States can collect child support arrearages of at least $500 owed to non-AFDC families through the Federal income tax refund offset mechanism. The arrearages must be owed to a "minor child." A similar mechanism is authorized for AFDC families, but the limit on arrearages is set at $150 by regulations.

PROPOSAL:

Extend for five years present law that allows States to request that the Internal Revenue Service (IRS) collect child support arrearages of at least $500 out of income tax refunds due to non-custodial parents. Since the current provision expires at the end of 1990, it would be extended through 1995.

Eliminate the minor child restriction on court-ordered arrearages in non-AFDC child support cases under the income tax refund offset for adults with a current support order who are disabled, as defined under OASDI or SSI.

EFFECTIVE DATE:

Date of enactment for extension; January 1, 1990 for minor child provision.

2. Medicaid Transition in Child Support Cases

CURRENT LAW:

Medicaid benefits continue for 4 months after a family loses AFDC eligibility as a result of collection of child support payments under Title IV-D of the Social Security Act. (Title IV-D authorizes the Child Support Enforcement (CSE)) program.) This provision expires on October 1, 1989.

PROPOSAL:

Make permanent the requirement that Medicaid benefits continue after a family loses AFDC eligibility as a result of collection of child support payments under the IV-D program. This requirement would be conformed to the Family Support Act by extending these benefits for 12 months after a family leaves AFDC due to collection of child support.

EFFECTIVE DATE:

October 1, 1989

II. INITIATIVE FOR THE POOR ELDERLY

A. SSI BENEFIT INCREASE

CURRENT LAW:

The 1989 Federal SSI benefit standard for an individual and a couple is $368 and $553 per month, respectively.

PROPOSAL:

Increase SSI benefits by $2 per month for individuals and $3 per month for couples.

EFFECTIVE DATE:

January 1, 1990

B. IMPROVE PROGRAM PARTICIPATION

CURRENT LAW:

Current law has no specific provision dealing with outreach programs. However, the Social Security Administration (SSA) conducts national, regional, and local outreach and public information campaigns to reach individuals who may be eligible for SSI. SSA is continuing to establish liaisons with national, State, and local legal and welfare agencies and advocacy groups to inform them about the SSI program and to enlist their assistance in finding potentially eligible persons.

PROPOSAL:

Establish a permanent SSI outreach program for adults. Require the Secretary of Health and Human Services (HHS) to report annually on the effectiveness of this program. Require the Secretary to aim outreach efforts at populations for whom it would be most effective. Such efforts should include not only ongoing efforts to notify social security beneficiaries of possible eligibility for SSI, but other efforts aimed at those not receiving social security.

EFFECTIVE DATE:

Date of enactment

C. REPRESENTATIVE PAYEE REFORM

CURRENT LAW:

When the Secretary of HHS determines it is in the best interests of the beneficiary, the Secretary may appoint a relative or some other person (known as a "representative payee") to receive the SSI payments on behalf of the beneficiary. The Secretary must investigate each individual applying to be a representative payee either before or within 45 days after the Secretary certifies payment of the benefit to that individual.

The Secretary must have a system to maintain accountability under which each representative payee is required to report not less than annually regarding the use of the payment. The Secretary is required to review the reports and identify instances where payments are not being used properly.

Anyone convicted of a felony under Section 1632(b) of the Social Security Act, which deals with fraud, may not be certified as a representative payee.

PROPOSAL:

1. Provide that persons who have been convicted of violations of certain provisions in the Social Security Act and the U.S. Code or who have been dismissed for misuse of payments could not be certified as representative payees. The Secretary could establish certain exceptions by regulation. In certifying representative payees, the Secretary would be required to: (a) document proof of identity; (b) verify social security numbers; (c) determine whether they have been convicted of a violation of certain provisions in the Social Security Act and the U.S. Code; and (d) determine whether they have ever been dismissed as a representative payee for misuse of payments.

2. Require the Secretary to maintain a centralized, current file readily retrievable by all Social Security Administration offices containing: (a) the address and social security number of all representative payees and associated beneficiaries; and (b) the name, address, and social security number of each person who has been convicted of the violation of certain provisions of the Social Security Act and the U.S. Code.

3. Require the Secretary to study and make recommendations regarding high-risk representative payees (see discussion under social security amendments).

4. Require the Secretary to maintain a list in each Social Security Administration office of all agencies and organizations providing representative payee services.

5. Allow community-based nonprofit social services agencies to receive a fee from beneficiaries, as determined by the Secretary, for providing representative payee services.

6. Authorize 2 demonstration projects (see discussion under social security amendments).

EFFECTIVE DATE:

July 1, 1990

D. TREATMENT OF INCOME IN SHARED LIVING ARRANGEMENTS

CURRENT LAW:

An individual living in another's household and receiving in-kind support and maintenance from the person in whose house he resides has his eligibility and benefits under SSI determined using a benefit rate that is reduced from the full Federal benefit rate by one-third. This is in lieu of including the actual value of the support and maintenance in his income.

Under regulations, the one-third reduction applies whenever an individual lives in the household of another unless: (1) all others in the household receive public assistance benefits; (2) the individual does not receive both food and shelter from within the household; or (3) the individual pays a pro rata share of the household's operating expenses.

If an individual is living with others and is not subject to the one-third reduction or is the owner of the house, regulations provide for determining whether the individual is receiving in-kind assistance from someone in the household. If he is receiving assistance, it is presumed to have a value of one-third of the Federal benefit rate plus $20 (the unearned income disregard) unless he shows SSA that the value of what he receives is less. The effect of the presumed maximum value is to reduce the benefit of the recipient by an amount equal to the one-third reduction.

PROPOSAL:

Count the lesser of the actual value of in-kind assistance received by individuals or the current law one-third of the SSI benefit against the SSI benefit. Require the Secretary to study the effect this provision has on SSI beneficiaries and the administration of the program and to report to Congress not later than 2 years after the date of enactment.

EFFECTIVE DATE:

January 1, 1990

E. EXCLUSION FROM INCOME OF DOMESTIC COMMERCIAL TRANSPORTATION TICKETS RECEIVED AS GIFTS

CURRENT LAW:

Domestic commercial transportation tickets received as gifts by SSI recipients are treated as unearned income and valued at their current market value unless the ticket is not convertible to cash (e.g., charged on the donor's credit card), in which case it is not counted as income.

PROPOSAL:

Gifts of domestic commercial transportation tickets given to an individual or eligible spouse, which are used by that individual or spouse and not converted to cash, would be disregarded in determining their income.

EFFECTIVE DATE:

October 1, 1989

F. REDUCTION IN TIME DURING WHICH INCOME AND RESOURCES OF SEPARATED COUPLES MUST BE TREATED AS JOINTLY AVAILABLE

CURRENT LAW:

A husband and wife who are aged, blind, or disabled, and who have not been living apart from each other for more than 6 months are considered to be an eligible couple under SSI. If the couple separates, the spouses are considered to be a couple for SSI purposes until they have lived apart for more than 6 months.

PROPOSAL:

A married couple would be treated as separate individuals for the purposes of determining eligibility and benefit amounts under SSI beginning after the first full month of their living apart. The Secretary could waive the one month period in an emergency.

EFFECTIVE DATE:

October 1, 1989

G. EXCLUSION OF INTEREST AND ACCRUALS ON BURIAL SPACES FROM RESOURCE LIMITS

CURRENT LAW:

Burial funds within established limits of $1,500 and burial spaces belonging to individuals and their immediate family are excluded from an individual's resources. Interest and other accruals on the $1,500 burial fund are excluded as a resource for all purposes, but are not excluded for burial spaces.

PROPOSAL:

Treat burial spaces and burial funds the same way by excluding interest and other accruals on burial spaces from the resource limits.

EFFECTIVE DATE:

October 1, 1989

H. WORK INCENTIVES FOR SOCIAL SECURITY DISABILITY INSURANCE (SSDI) RECIPIENTS WHO BECOME INELIGIBLE FOR SSDI BECAUSE OF EARNINGS

CURRENT LAW:

Social security disability insurance (SSDI) recipients become ineligible for SSDI as a result of earning more than $300 per month following a 9-month trial work period and a 3-month grace period. These individuals generally cannot qualify for SSI and its work incentive provisions under section 1619 because they cannot meet the test of disability that is applied at application (i.e. their earnings demonstrate substantial gainful activity in excess of what is allowed to meet the test of disability).

PROPOSAL:

Allow SSDI recipients who lose their SSDI benefits because of earnings to participate in the SSI work incentives program under section 1619 without first being required to receive at least one month of SSI benefits. For those otherwise eligible for SSI who do not meet the SSI resource limits ($2,000 for individuals and $3,000 for couples), a 33-month period would be allowed in which they could reduce their assets below the SSI limits so that they too could be eligible.

EFFECTIVE DATE:

July 1, 1990

III. MISCELLANEOUS AMENDMENTS

A. UNEMPLOYMENT COMPENSATION

1. Optional Benefits for Non-Professional School Employees

CURRENT LAW:

States are required to deny eligibility for Unemployment Compensation to nonprofessional employees of educational institutions between academic years or terms. Before the Social Security Amendments of 1983, States had the option to provide such benefits.

PROPOSAL:

Allow States the option of paying unemployment compensation to nonprofessional employees of educational institutions between academic terms or years.

EFFECTIVE DATE:

Date of enactment

2. Prohibition on Collateral Estoppel

CURRENT LAW:

Currently, 14 States prohibit courts from using quasi-judicial decisions reached in Unemployment Compensation hearings to stop law suits on related employment issues, such as wrongful discharge from a job. This judicial doctrine is called, "collateral estoppel." Federal law has no provision.

PROPOSAL:

Require State Unemployment Compensation laws to prohibit courts from stopping law suits on related employment issues based on a decision made in an unemployment compensation hearing.

EFFECTIVE DATE:

Generally, October 1, 1989

B. FAMILY SUPPORT ACT

The Office of Legislative Counsel has identified several technical errors (i.e., incorrect cross references and citations as well as text that was inadvertently dropped) in the Family Support Act of 1988. Legislation to correct these technical errors is included.

IV. AFDC QUALITY CONTROL

A. RESOLVE THE BACKLOG OF DISALLOWANCES THROUGH FY90

CURRENT LAW:

States are required to pay back estimated misspent Federal funds, or so-called disallowances, under the AFDC quality control (QC) program. States with error rates above 3 percent are subject to repaying the Federal matching funds on the erroneous payments exceeding 3 percent. States may appeal disallowances to the Secretary of HHS, to a Departmental Appeals Board, and ultimately, to the courts.

All States but one, Nevada, are subject to disallowances. Currently, the States have been informed that they owe a total of about $1.2 billion to the Federal government for misspent Federal funds from fiscal years 1981 through 1986. A moratorium on collecting these disallowances expires on July 1, 1989.

PROPOSAL:

To resolve the backlog of pending disallowances, defined as all disallowances from fiscal years 1981 through 1990, the following statutory changes would be made:

1. States would be subject to potential disallowances if their official error rates are above the higher of: (a) the lowest national annual average achieved in prior years; or (b) in the case of fiscal years 1981 and 1982, the target error rate in effect for those fiscal years for the respective States.

2. State official error rates would be recalculated excluding so-called "technical errors." Technical errors are errors which, if corrected, would not result in a change in benefit amount, including failure to secure or apply for a Social Security number, failure to register for a work program, failure to assign child support rights, failure to assign rights to third party payments, and failure to obtain monthly reports from cases for which they are required.

3. All States subject to potential disallowances would have one of two options:

(a) pay 75 percent of the potential disallowance in lieu of any further appeal; or

(b) appeal directly to the Departmental Appeals Board. There would be no appeal to the Secretary for a waiver of the disallowance. States would have 6 months from the later of the date of enactment or the official announcement of the disallowance in which to file an appeal. The Board must rule on the appeal within 12 months from the date on which the appeal is filed. Interest would accrue on disallowances beginning after the

Departmental Appeals Board decision and would be collected after appeals are exhausted. Interest is paid only on the final disallowance amount. The Board's decision would be subject to judicial review.

4. In deciding how much, if any, sanction would be imposed on the States, the Board must consider the following illustrative, but not all inclusive list of factors:

-- Whether the State's error rate is sufficiently statistically reliable to support a conclusion that the State exceeded the tolerance level;

-- Whether the errors for which the State was cited in fact represented misspending of funds;

-- Whether the errors for which the State was cited could have been avoided by the State agency by cost-efficient means that would not have interfered with program purposes;

-- Whether the State's error rate in a year diverges from its historical trend enough to demonstrate a significant problem in need of correction;

-- Whether the error rate was affected by factors beyond the State's control, such as caseload growth, caseload composition, program changes, strikes, or natural disasters;

-- Whether the State's record with respect to corrective action demonstrates a concerted effort to reduce errors;

-- Whether measurement of errors was against State practice as outlined in State regulations and policy clarifications; and

-- Any other factors the Board determines to be relevant.

EFFECTIVE DATE:

July 1, 1989, applying to potential disallowances for fiscal years 1981 through 1990

B. PERMANENTLY MODIFY THE QUALITY CONTROL SYSTEM AFTER FY90.

CURRENT LAW:

States are required to pay back estimated misspent Federal funds, or so-called disallowances, under the AFDC quality control (QC) program. States with error rates above 3 percent are subject to repaying the Federal matching funds on the erroneous payments exceeding 3 percent. States may appeal disallowances to the Secretary of HHS, to a Departmental Appeals Board, and ultimately, to the courts.

PROPOSAL:

The following modifications would be made in the existing AFDC quality control system, beginning with fiscal year 1991:

1. Technical errors (as defined in the previous section) would be determined but excluded from all error rates for purposes of estimating disallowances. Recouped overpayments from child support collections or other efforts would also be excluded before determining potential disallowances.

2. The official estimate of the error rate for the State would be the midpoint of the confidence interval around each State estimate. Confidence intervals would be set at the 95 percent level. Standard errors and confidence intervals must be published.

3. Thresholds for State error rates would be:

Below Incentives Threshold:	Incentives paid
Between Incentives and Disallowance Thresholds:	Corrective actions required
Above Disallowance Threshold:	Potential disallowance imposed

The incentives threshold would be one-half of the lowest sum of the national average overpayment and underpayment error rates ever achieved in prior years beginning with fiscal year 1981. Technical errors would be excluded from the overpayment error rates.

The disallowance threshold, would be one percentage point plus the lowest sum of the national average overpayment and underpayment error rates ever achieved in prior years beginning with fiscal year 1981. Technical errors would be excluded from the overpayment error rates.

Incentive payments would equal half the difference between the incentive threshold and the State's error rate times the Federal share of the State's total payments.

Disallowances are the Federal share of erroneous payments in excess of the disallowance threshold.

4. As in the resolution of the backlog of disallowances, States would have one of two options:

(a) pay 75 percent of the potential disallowance in lieu of and further appeal; or

(b) appeal the sanction directly to the Departmental Appeals Board within 45 days. The Department of Health and Human Services waiver process would be eliminated. The Board would follow the same procedure as outlined under the backlog proposals. In addition, the Board must consider whether the State's error rate is based on errors that are reflected in other welfare programs and whether offsetting savings in other programs might have resulted from misspending on the AFDC program. The Board's decisions would be subject to judicial review.

5. Interest would accrue on disallowances beginning after the Departmental Appeals Board decision and would be collected after appeals are exhausted to dissuade States from simply delaying the collection by appealing. Interest would be paid on only the final disallowance amount.

6. Require States to collect and report data on underpayments and negative case actions as part of the basic quality control sample. Negative case actions include improper denials and terminations. The Secretary would be required to study negative case actions and make recommendations to Congress on how to incorporate them into State error rates and the Federal incentive and disallowance formulas. States must begin reporting all data by no later than October 1, 1990. The Secretary must report to Congress no later than October 1, 1992.

EFFECTIVE DATE:

Date of enactment

V. UNEMPLOYMENT COMPENSATION AMENDMENTS

A. IMPROVE EXTENDED BENEFITS

CURRENT LAW:

The Extended Benefits (EB) program provides up to 13 weeks of additional benefits in States where unemployment rates are relatively high. The program activates in States under a mandatory or an optional trigger. The mandatory trigger activates the program in a State if the applicable insured unemployment rate is at least 5.0 percent and 20 percent higher than the average for the prior two years. The optional trigger activates the program in a State if the applicable insured unemployment rate is at least 6.0 percent. All but 12 States have adopted the optional trigger. The applicable insured unemployment rate is a 13-week moving average insured unemployment rate for each State. (The insured unemployment rate is less than half of the overall or total unemployment rate because about two-thirds of the unemployed are not insured.) Currently, the EB program is activated in only one States -- Alaska.

PROPOSAL:

1. Create a local area trigger for the Extended Benefits (EB) program using the total unemployment rate (TUR) for metropolitan statistical areas (MSAs).

2. The Governor could activate EB in MSAs with TURS of at least 8 percent. This would delegate authority to the Governors to activate EB in areas with high unemployment if he determines there is a need. The Governor could activate EB in contiguous nonmetropolitan areas with populations of at least 50,000, based on a plan approved by the Secretary of Labor. This would allow the Governor to help less populous areas for which there are no monthly unemployment rates published. The Governor's plan must justify the EB period in the nonmetropolitan area based on unemployment data available in the State. The Governor may use insured unemployment data to calculate total (insured plus uninsured) unemployment rates for this purpose. The Secretary of Labor will judge the validity and reliability of the data and approve or disapprove the plan.

3. In order to lessen statistical problems with the monthly MSA and most State unemployment rates, the trigger TUR would be a 12-month moving average. The Governor could declare a 13-week EB period after any month in which the trigger TUR was at least 8 percent. As long as the TUR is at least 8 percent, the Governor could reauthorize a 13-week EB period after each one expires.

EFFECTIVE DATE:

October 1, 1990

B. PROMOTE RETRAINING AND REEMPLOYMENT OF LONG-TERM UNEMPLOYMENT COMPENSATION CLAIMANTS

CURRENT LAW:

As a condition for employers in a State to receive the normal tax credit against the gross Federal unemployment tax rate, all State laws must provide that Unemployment Compensation shall not be denied to an otherwise eligible individual for any week during which he is attending a training course with the approval of the State agency. State laws must provide also that individuals in training not be held ineligible or disqualified for being unavailable for work, for failing to make an active search for work, or for failing to accept an offer of, or for refusal of, suitable work. Generally, approved training is limited to vocational or basic education training, which excludes regularly enrolled students from collecting benefits under the approved training provision.

PROPOSAL:

1. Require States to approve training from an accredited training or educational institution for unemployment compensation claimants who are likely to exhaust their unemployment compensation during a long spell of unemployment, unless the State shows that the training would not increase significantly the chances that the claimant would obtain another suitable job. Approvable training is limited to classroom training, occupational skill training, basic or remedial education, or literacy or remedial English training.

2. Promote retraining and reemployment programs for unemployment compensation claimants by authorizing 10 States to conduct five-year demonstration projects approved by the Secretary of Labor that States could finance from the additional funds provided below under the "Reed Act." States with current funds equal to at least 2 percent of covered wages paid in the State for the most recent 12-month period would be eligible to apply for a demonstration project. Services would be aimed at those claimants likely to exhaust their unemployment compensation during a long spell of unemployment. States must study the effect of the demonstration using an experimental method including random assignment of individuals between a treatment group and a control group.

EFFECTIVE DATE:

Item 1, October 1, 1990; item 2, date of enactment

C. IMPROVE ADMINISTRATIVE FINANCING

CURRENT LAW:

The "Reed Act," named after the Honorable Daniel A. Reed, Chairman of the Committee on Ways and Means when the law was passed in 1954, allows excess Federal unemployment taxes, which occur when the Federal accounts of the Unemployment Trust Fund overflow, to be used for administrative purposes or benefits by the States. It begins to expire over three years on July 1, 1990.

Since the "Reed Act" was enacted in 1954, overflows have occurred only in 1956, 1957, and 1958. These additional funds were available to be appropriated by State legislatures and could be used for administration or benefits. Most of these funds have since been spent for benefits; $31.8 million remains in the accounts of 31 States. Under the Administration's projections, a new overflow probably would occur in 1996. With a substantial increase in the Federal unemployment taxable wage base (see below), however, the overflow could occur as early as 1994.

PROPOSAL:

1. Make the "Reed Act" permanent. This would give States the authority to use funds overflowing from the Federal Unemployment Trust Fund accounts back to the State accounts.

2. Distribute from the Federal accounts of the Unemployment Trust Fund $300 million per year beginning in FY90 as if a $300 million overflow had occurred. The distribution would be based on an estimate of the share of Federal Unemployment taxes paid for administration of the system by employers in each State. These funds could be used for administration or benefits.

As overflows actually begin to occur in the 1990s, they would be deducted from the $300 million annual distributions so that the net distribution is $300 million until the overflow exceeds the $300 million level. When the overflows reach $300 million or more per year, the provision authorizing the $300 million reallocation would expire and the full overflows would be reallocated to the State accounts.

EFFECTIVE DATE:

Date of enactment

D. IMPROVING FUTURE TRUST FUND SOLVENCY

CURRENT LAW:

In general, under the Federal unemployment tax employers pay 0.8 percent on the first $7,000 paid annually to each employee. This amounts to $56 per year per employee.

These taxes are used to finance: (1) Federal and State administrative costs of the Unemployment Insurance Service and the Employment Service; (2) the Federal half of the Extended Benefits (EB) program; and (3) a loan fund for insolvent States. These accounts currently do not have enough funds on reserve to cover increased outlays if a recession occurs in the next few years. For the end of fiscal year 1989 the Department of Labor has projected that the administration account will have enough reserves, but the accounts for the EB program and for State loans will have shortfalls of $0.8 and $9.3 billion, respectively. Moreover, even with the Administration's optimistic assumptions over the next five years, the Administration has projected that the loan account will not have enough reserves by the end of 1994, when its shortfall will be $3.5 billion.

PROPOSAL:

Increase the $7,000 annual taxable wage base under the Federal Unemployment Tax Act to $8,000, $9,000, and $10,000 in 1990, 1991, and 1992, respectively, and then index it to increases in the national average covered wage. This means that the tax per employee per year would increase from $56 in 1989 to $60 by 1992.

Require the Secretary of Labor to submit an annual report on the status of each account in the unemployment trust fund. The report should include five-year projections based on the President's budget and an analysis of the effects of a typical recession within the five-year period. The report would be due on no later than March 31 of each year.

EFFECTIVE DATE:

January 1, 1990

E. MODIFY CREDIT REDUCTIONS FOR DEBTOR STATES

CURRENT LAW:

If a State has an overdue outstanding loan from the Federal government, employers in the State are eventually subject to escalating 0.3 percentage point reductions in their Federal unemployment tax credit of 5.4 percent. As these reductions occur, the additional taxes paid by employers in such States go to paying off the State's debt. However, in the last year of the loan, the additional taxes resulting from the credit usually exceed the balance left on the loan. The excess is allocated to the State's account in the unemployment trust fund, which is then available to pay State Unemployment Compensation benefits.

PROPOSAL:

In the last year of the credit reduction process, impose a credit reduction only sufficient to pay off the balance of the loan.

EFFECTIVE DATE:

January 1, 1990

SUBCOMMITTEE ON HEALTH

I. MEDICARE PART A PROVISIONS

1. PAYMENT FOR CAPITAL-RELATED COSTS

Present Law.--(a) Payment for Capital-related Costs--Capital-related costs (including depreciation, interest, and rent) are excluded from the prospective payment system (PPS) until September 30, 1991. Until that time, capital costs continue to be reimbursed on a cost basis.

The Omnibus Budget Reconciliation Act of 1987 (OBRA '87) reduced payment amounts for capital-related costs by twelve percent for fiscal year 1988 beginning January 1, 1988, and fifteen percent for fiscal year 1989. The legislation exempts sole community hospitals from capital-related payment reductions. Current law would pay hospitals 100 percent of their capital costs in fiscal year 1990.

(b) GAO Study of Cost of Low Occupancy--No provision.
Explanation of provision.--(a) Payment for Capital-related Costs--Capital-related payment amounts would be reduced by fifteen percent in FY 90. Sole community providers would continue to be exempted from the reductions.

(b) GAO Study of Costs of Low Occupancy--The General Accounting Office would be directed to study the effect of low occupancy on hospital costs. The study would include, at a minimum, the effect on health care system costs and individual hospital costs, the relationship of fixed and variable costs in hospitals, the extent to which closure of unneeded beds or consolidation of hospitals could result in savings to the total health care system and to Medicare, and other relevant issues, including recommendations for changes in current policy in this area.

Effective Date.--October 1, 1989

2. HOSPITAL PAYMENTS

Present Law.--(a) Reductions in Hospital Payments--Current law provides that for Fiscal Year 1990 and subsequent years hospitals payments per discharge for all Prospective Payment System (PPS) hospitals will be increased at a rate equal to the hospital market basket percentage increase. The hospital market basket index is an inflation index developed by the Secretary to reflect increases in the costs of goods and services purchased by hospitals.

The Secretary is required to recommend to the Congress an appropriate factor to be used to update the large urban, other urban, and rural standardized amounts which are the basis for payment for hospitals in each type of area. The recommendation must take into account amounts necessary for the effective and efficient delivery of medically appropriate and necessary care of high quality. The Secretary has recommended an update of market basket minus 1.5 percentage points in FY 1990. The Secretary has also noted his belief that differential updates for hospitals in rural, large urban, and other urban areas would be more appropriate than a single uniform update.

(b) Recalibration of DRG weights--The Secretary is required to adjust the DRG classifications and weighting factors annually beginning in FY 1988.

(c) Increase in Payments to Rural Hospitals--As described above current law would increase payments to rural PPS hospitals at the rate of increase in the market basket.

(d) Treatment of Rural Regional Referral Centers--Hospitals may be classified as rural regional referral centers based upon size, case mix intensity, number of discharges, and operating characteristics. In addition, OBRA '86 extended the classification of certain rural hospitals as rural regional referral centers through FY 89 based upon these hospitals having been previously designated as regional referral centers.

(e) Sole Community Provider Hospitals--Sole community provider hospitals are those by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals as determined by the Secretary is the sole source of hospital care available to individuals in a geographic area. If a hospital chooses to be designated as a sole community provider, it receives payment based 75 percent on hospital-specific costs, and 25 percent on regional rates.

(f) Geographic Classification of Hospitals--Hospitals are classified as urban if the hospital is within an area classified as a Metropolitan Statistical Area (MSA) or if the county in which the hospital is located is adjacent to two or more MSAs, meets certain other criteria, and meets criteria regarding commuting from the adjacent rural county to the MSAs. All other hospitals are classified as rural. The Secretary has no discretion to modify these areas. Under current law the Secretary has discretion to establish geographic areas for purposes of adjusting for differential wage levels, but the Secretary has generally chosen to use MSAs as the basis for the wage adjustment.

(g) Study of Differences in PPS Standardized Amounts--No provision

(h) Essential Access Community Hospital (EACH) Demonstration Program--OBRA '87 authorized appropriations from the Part A Trust Fund of $15 million for the Rural Transition Grant Program which supports grants to private not-for-profit rural hospitals of up to $50,000 per year for up to two years for strengthening the financial and managerial ability of isolated and financially distressed rural hospitals.

(i) Rural Health Medical Education Demonstration Project--OBRA '87 authorized four rural health medical education demonstration projects in which a sponsoring teaching hospital would place residents in a rural hospital. The costs associated with the residents are reimbursed through the sponsoring teaching hospital through payments for direct medical education.

(j) Hospital Reporting--OBRA '87 directed the Secretary to develop a uniform hospital reporting demonstration project in two states. In those states, California and Colorado, hospitals are required to report hospital statistical and cost information using a uniform reporting format, developed by the Secretary.

(k) Increase Disproportionate Share Payments--Disproportionate share payments are made to a hospital if its share of low income patients equals or exceeds 15% for an urban hospital with 100 or more beds, 40% for an urban hospital with less than 100 beds, or 45% for a rural hospital. The adjustment is increased by 0.5 percentage points for each 1.0 percentage point increase in the proportion of low income patients. The current formula for such payments is $(P - 15).5 + 2.5$ where P represents the hospital's disproportionate share percentage.

Certain other hospitals qualify for a disproportionate share adjustment if the hospital is in an urban area, has more than 100 beds, and can demonstrate that its net inpatient care revenues from other than Medicare and Medicaid payable by State and local governments for indigent care exceed thirty percent of the hospital's net revenue. These hospitals receive a disproportionate share adjustment of 25 percent.

Explanation of provision.--(a) Reduction in Hospital Payments--The hospital update factors for FY 90 would be set in order to achieve the same reduction in payments as if the base had been decreased by 1.35 percent, as follows:

Large urban:	market basket minus 1.25 percentage points
Other urban:	market basket minus 1.75 percentage points
Rural:	market basket minus 0.75 percentage points

However, rural payments would be increased by the provision following, thus achieving a higher update.

CBO presently estimates that the market basket will increase 5.4 percentage points in FY 90.

(b) Recalibration of DRG weights--In recalibrating the DRG weights on an annual basis, the Secretary would be required to do so on a budget neutral basis for FY 90 and for each fiscal year thereafter.

(c) Increase in Rural Payments--The update for rural hospitals would be increased by 2.75 percentage points above the level achieved by the above provision, thus achieving an update of market basket plus two percentage points.

(d) Treatment of Regional Referral Centers--All hospitals designated as regional referral centers as of September 30, 1989 would continue to be designated as such for a three-year period.

(e) Sole Community Provider Hospitals--All hospitals more than 35 miles from another hospital (as determined by the Secretary) would be eligible for designation as sole community provider hospitals. Payment to designated hospitals would be through prospectively-determined rates based, at the hospital's option, on 100 percent hospital-specific costs determined using costs reported for the hospital's cost reporting period beginning in FY 82; 100 percent hospital-specific costs based on the hospital's cost report for FY 87; or, Federal prospective payment system rates. Such hospitals would continue to be eligible for a volume adjustment and would be exempted from reductions in capital payments. Current sole community provider hospitals which do not meet the new criterion would continue to qualify for payments as under current law.

(f) Geographic Classification of Hospitals--The Secretary would be required to establish a process through which a hospital could apply for changes in the status of the geographic area in which the hospital is located, pertaining to rural counties seeking to be reclassified as urban or pertaining to changes in urban wage area designation. The Secretary would be required to publish instructions for application by hospitals for such changes within six months of enactment. The Subcommittee intends that changes in classification could apply only to whole counties and that the authority to change a county's status could only be approved based upon significant justification of substantial changes in the circumstances leading to the original classification, such as very large changes in population not yet enumerated through the decennial census or very large changes in relative wages.

(g) Study of Differences in PPS Standardized Amounts--The Secretary would be required to analyze Medicare's current differential in standardized amounts and to evaluate whether the differential could be eliminated with either the addition of further adjustments or changes in current adjustments. If the Secretary so recommended, he would be required to make recommendations regarding a transition to a single national rate. The Secretary would be required to address at a minimum appropriate adjustments for differences in the severity of illness of patients currently assigned to the same diagnosis related group, as well as other adjustments which he found appropriate to reflect differences in cost in different types of areas. The Prospective Payment Assessment Commission would be required to evaluate the Secretary's findings and recommendations, if any. The study by the Secretary would be required to be complete by October 1, 1990. ProPAC would be required to report by April 1, 1991.

(h) Essential Access Community Hospital (EACH) Demonstration Program--The Secretary would be authorized to establish an EACH demonstration program in up to ten states. The Subcommittee intends that the Secretary would develop program with advice from the Office of Rural Health Policy.

Participating states would apply to the Secretary (in a form and manner specified by the Secretary) for support of activities to foster the creation of EACH networks in the State. In applying the State would be required to consult with the State hospital association and rural hospitals in the state, although it is not intended that such consultation would constitute a veto of the State's proposal to the Secretary.

The State's responsibilities under the demonstration program would include designation of EACH hospitals and support in developing rural health networks to include EACH hospitals and rural primary care hospitals, although participation by hospitals in the development of such networks is voluntary. Although the State would have flexibility in developing rural health networks to protect access to health and hospital services for rural citizens of the state, it is intended that EACH networks would include at least one EACH hospital or rural referral center with two or more rural primary care hospitals connected to the hospital through referral agreements, communications systems, including, as feasible, telemetry systems and systems for electronic sharing of patient data, and emergency and non-emergency transportation. In some states it may be feasible for an urban hospital to function as the central receiving unit for a network. Given concerns about possible violations of anti-trust statutes, it is anticipated that state health and licensing authorities would be directly involved in the creation of rural networks as part of the demonstration.

EACH hospitals could be no less than 35 miles from another EACH hospital, a rural referral center, or an urban hospital which meets the criteria for a referral center, although the Secretary could waive this criterion if the State proposed different criteria in its application and the Secretary approved. In addition, EACH hospitals could have no less than 75 beds (unless no other hospital was within 35 miles or the Secretary granted a waiver to assure access) and meet such other criteria as a state deemed useful and to which the Secretary agreed.

EACH hospitals would be required: 1) to provide emergency and back-up services for its network and throughout the service area; 2) to agree to accept transfers from primary care hospitals in the network and throughout service area; 3)to provide staff privileges to physicians in service area providing care at rural comprehensive care centers; 4) to agree to other responsibilities which the State and/or the Secretary may identify.

Rural primary care hospitals would be defined as hospitals which apply to the state participating in the demonstration for support to become and operate as such, although specific designation and reimbursement would be subject to the agreement of the Secretary. Demonstration states would be expected to give priority to rural primary care hospitals participating in a network with EACH hospitals or rural referral centers, but could designate primary care hospitals which were not part of a network.

Rural primary care hospitals would cease providing inpatient acute care other than on a temporary basis. These hospitals would include no more than six holding beds for patients needing to be transferred to a hospital -- patients could not be cared for in these beds for more than 72 hours, except in exceptional cases, such as longer stays due to inclement weather or other compelling reason precluding transfer. 24-hour emergency care necessary to stabilize emergency patients would be required. Rural primary care hospitals would be required to have transfer agreements and other necessary arrangements with the other members of its network, particularly the hospital, and would be required to participate, as appropriate, in the network's communication system including systems for electronic sharing of patient data, including telemetry and medical records.

Rural primary care hospitals would have flexibility with respect to staffing as special staffing requirements would apply including that a physician's assistant or nurse practitioner could supervise holding beds, subject to physician oversight. If the rural primary care hospital chose to provide long-term care, it could do so under current law as a free-standing skilled nursing facility and would be required to meet the conditions of participation for such facilities.

Under the demonstration EACH hospitals would be reimbursed as sole community providers. To the extent that an EACH hospital incurred additional cost, such as costs for establishing a system to receive and send telemetry data or to provide emergency back-up, the Secretary would be authorized to add such costs to the hospital's base year costs used to determine payments to the hospital, if the Secretary determined that such costs would create a permanent increase in the hospital's costs.

Rural primary care hospitals would be reimbursed for Part B services, at the facility's option, based upon: 1) a cost-based facility fee exclusive of professional medical services otherwise reimbursed through charges; or, 2) an all-inclusive rate including payment for both professional services and facility costs. The Secretary would be authorized to pay on either of these bases for three years while developing a fully prospective all-inclusive comprehensive payment system. Rural primary care hospitals would be reimbursed for Part A services to patients in holding beds on a 100 percent hospital-specific cost basis, subject to the current target rate of increase limits of section 1886 (b) with the base year being the first year of operation as a rural primary care hospital. The Secretary would be authorized to develop a prospective payment methodology for holding bed services.

The current Rural Transition Grant Program would be modified by the EACH Demonstration Program. The authorization of appropriations would be increased to $40 million, extended through FY 92, and separated into three parts.

The first part, authorized at $10 million, would support grants of up to $50,000 to not-for-profit rural hospitals or a consortia of such hospitals for the purposes the current Rural Transition Grant Program or for the purpose of planning for the creation of a rural health network or a transition to a rural primary care hospital. Such grants could be made to hospitals in states not participating in the EACH demonstration, but would require review and comment by the Governor or an agency designated for that purpose.

The second part, authorized at $15 million, would support grants of up to $200,000 to not-for-profit rural hospitals and consortia of such hospitals and would support implementation of a conversion to a rural primary care hospitals or the creation of a network. Grant funds could be used for capital costs of conversion, development of communications systems, development of emergency transportation systems, and other related purposes. Grants would be available only in states participating in the EACH demonstration, and hospital applications would have to be consistent with plans developed by the state. Participating states would have to approve applications for implementation grants.

The third part, authorized at $15 million, would support grants to States for their activities under the demonstration, including planning for rural health networks, convening of involved hospitals, local governmental officials, and citizens, and development and support of communication and emergency transportation systems.

(i) Rural Health Medical Education Demonstration Project--The number of sites under the demonstration would be increased from four to ten.

(j) Hospital Reporting--Hospitals receiving disproportionate adjustments, sole community providers, and EACH hospitals would be required to report statistics and costs using the uniform hospital report developed by the Secretary in the hospital reporting demonstration project.

(k) Increase Disproportionate Share--The disproportionate share adjustment would be increased for urban hospitals over 100 beds by increasing the multiplier in the formula from .5 to .55 resulting in a formula of (P - 15).55 + 2.5. For hospitals for which the disproportionate patient percentage exceeded 20.2, the adjustment would be increased further. For the portion of a hospital's number of low-income patients necessary to reach the 20.2 threshold, the adjustment would be calculated using the formula used for hospitals below the threshold. For the portion of a hospital's low-income patients above the threshold, the multiplier would be increased to .7, as follows: (P - 15).7 + 2.5. Hospitals which qualify for a disproportionate share adjustment based upon revenue for indigent care received from State and local government would receive a disproportionate share adjustment of 26 percent.

Effective Date.--Paragraphs (a), (c), and (k) effective October 1, 1989. Paragraphs (b), (f), (g), (h) and (i) effective upon enactment. Paragraphs (d), (e), and (j) effective for cost reporting periods beginning on or after October 1, 1989.

3. PROSPECTIVE PAYMENT SYSTEM-EXEMPT HOSPITALS

Present Law.--(a) Comprehensive Cancer Center Hospitals--The Secretary is directed to provide for such exceptions and adjustments as he deems appropriate with respect to hospitals involved extensively in treatment for and research on cancer. The Secretary has chosen to pay cancer center hospitals as if they were exempt from PPS for purposes of operating cost reimbursement. However, they are treated similarly to PPS hospitals for purposes of periodic interim payments and for capital payments.

(b) Rebasing of Certain PPS-Exempt Hospital Payments--PPS-exempt hospitals are reimbursed using a system of target amounts which are defined as the hospital's base-year costs inflated by a rate of increase limit. Hospitals below the target amount receive a bonus. The current base year for determining target amounts is generally cost reporting periods beginning in FY 82.

(c) Applications for Adjustments to the Target Amounts--The Secretary is directed to provide an exemption from, or an exception and adjustment to a hospital's target rate if events beyond the hospital's control, or extraordinary circumstances, including changes in case mix and volume, or the closure or another hospital, cause a distortion in the hospital's costs.

Explanation of provision.--(a) Comprehensive Cancer Center Hospitals--Comprehensive Cancer Center Hospitals would be exempted permanently from PPS, if they had been designated by the Secretary as comprehensive cancer center hospitals under current authority by June 1, 1989. For purposes of payment of capital-related costs, such designation as PPS-exempt hospitals would be retroactive to October 1, 1986.

(b) Rebasing of Certain PPS-exempt Hospital Payments--The base year for determining target amounts for long-term hospitals and for cancer center hospitals would be cost reporting periods beginning in FY 87.

(c) Applications for Adjustments to the Target Amounts--The Secretary would be required to publish within 180 days of enactment instructions to hospitals and fiscal intermediaries pertaining to the application process for an exception or adjustment to the target amounts.

Effective Date.--Paragraphs (a) and (b) effective for cost reporting periods beginning in FY 90. Paragraph (c) effective upon enactment.

4. HOSPICE

Present Law.--A Part A beneficiary who is terminally ill may elect to receive hospice services for two 90 day periods and one subsequent 30 day period for a total of 210 days during an individual's lifetime. Beneficiaries making this election must choose to receive services through a hospice and give up most other Medicare benefits. The period of coverage may be extended beyond the 210 day period if the beneficiary's physician or hospice director recreative that the beneficiary is still terminally ill.

The Department of Health and Human Services (HHS) implemented a prospective payment methodology for hospice care. Under this methodology, hospices are paid one of several predetermined rates for each day a Medicare beneficiary is under the care of the hospice. The rates vary according to the level of care furnished to the beneficiary.

Four basic payment categories are used for reimbursing hospices. The payment rates are national rates which are adjusted by the Bureau of Labor Statistics wage index for an area. The rates are as follows: (a) routine home care day -- $63.17 (b) continuous home care day -- $368.67 (c) Inpatient respite care day -- $65.33. (d) General inpatient care day -- $281.00.

No adjustments are made to compensate hospice providers for extraordinarily high cost cases.

Explanation of provision.--Hospice payment rates would be increased by 20 percent effective October 1, 1989 to reflect increases in inflation since the rates were last adjusted by Congress in 1986. In subsequent years, the payment rates would be indexed to the hospital market basket. The Secretary would be directed to establish an outlier policy that would be budget neutral and similar to the Medicare Prospective Payment System (PPS) outlier policy.

Effective Date.--October 1, 1989

5. PART A MISCELLANEOUS AND TECHNICAL PROVISIONS

Present Law.--(a) Standards for Hospital Care of the Medically Indigent--Medicare-participating hospitals are not required to also participate in the Medicaid program. Peer Review Organizations are required to review hospital inpatient care provided to beneficiaries for medical necessity and quality.

(b) Extension of Waiver for Finger Lakes Area Hospital's Corporation--The Secretary may provide that payment to hospitals in a State may be made consistent with a state hospital reimbursement system rather than under Medicare's reimbursement system. For certain state reimbursement systems approved by the Secretary prior to the date of enactment of the Social Security Amendments of 1983, the Secretary is required to continue the use of a state system if the state so requests and, for the first three cost reporting periods beginning on or after October 1, 1983, the increase in payments for hospital inpatient care under the state system is less than the national increase in payments for inpatient care. At the end of the three-year period the Secretary may choose to evaluate the state system based on whether, for 36-month periods, the amount of payments to hospitals under the state system exceeds those which would have been made under the national system.

There are two such waivers at present: Maryland and New York. The New York waiver covers only the four counties participating in the Finger Lakes Area Hospital's Corporation. FLAHC is the sole rural hospital payment demonstration.

(c) Information on Accreditation--A hospital may be deemed to meet the conditions of participation for Medicare if the hospital is accredited as a hospital by the Joint Commission on Accreditation of Hospitals (now referred to as the Joint Commission on Accreditation of Health Organizations (JCAHO)) and the hospital agrees to authorize JCAHO to release a copy of the hospital's most current survey if the hospital is the subject of a validation survey. Validation surveys are performed on a sample basis or if allegations about quality problems are made with respect to a specific hospital. The Secretary is prohibited from disclosing any information from a JCAHO survey. The Secretary may only take action to remove a hospital from Medicare due to serious deficiencies in quality based on the findings of a validation survey.

(d) Hospital Bad Debt Collection Policies--Under current regulation the Medicare program makes payments to hospitals to reimburse hospitals for Medicare bad debt, defined as the unrecovered costs associated with unpaid Medicare deductible and coinsurance. In order for unpaid deductible and coinsurance to be considered a bad debt, the bad debt must be related to covered services furnished to a Medicare beneficiary and the hospital must meet certain collection criteria.

OBRA '87 directed the Secretary to continue payments for Medicare bad debt under policy in effect at that time. The Technical and Miscellaneous Revenue Act of 1988 further clarified this policy by specifying that criteria for indigency determination procedures, for record keeping, and for determining whether to refer a claim to an external collection agency were also to be considered an integral part of the policy in effect at that time, and thus also not subject to change.

(e) Periodic Interim Payment for Merged Hospitals--Prospective Payment System hospitals receive periodic interim payments only if a hospital had a disproportionate share adjustment percentage of at least 5.1 during FY 87 or was a rural hospital with less than 100 beds and was receiving periodic interim payments as of June 30, 1987.

(f) Inner City Triage Demonstration Project--No provision.

(g) Cancer Center Treatment Demonstration Project and Study--Generally, Medicare does not reimburse providers for services considered to be experimental.

(h) Dentists as Hospital Medical Directors--Under the current Medicare conditions of participation for hospitals only a physician may be medical staff director of a hospital.

(i) Home Health Waiver of Liability--Home health service providers may be protected from retroactive Medicare coverage denials through a provision establishing a waiver of liability. Such protection is granted to providers who have a favorable presumptive status. Favorable presumptive status is calculated based on a comparison of the number of home health visits for which claims are submitted for Medicare payment in a calendar quarter compared to the number of visits for which payment is denied. Where the calculated rate is 2.5 percent or less, favorable status is awarded.

(j) Certification and Recertification in Skilled Nursing Facilities--Medicare requires that payment for certain covered services, including skilled nursing facility (SNF) care, may be made to a provider of services only if there is a physician's certification concerning the medical necessity of the services furnished and, in certain circumstances, only if there is a physician's recertification of the continued need for the covered services.

With respect to skilled nursing facilities, the required certification must indicate that the individual needs skilled nursing care or other skilled services on a daily basis, and that the skilled services can be provided in a skilled nursing facility or on an inpatient basis. The recertification must include a written indication of the reasons for continued need of SNF services and an estimate of the amount the individual will need to remain in the SNF. The first recertification must be made no later than the 14th day of SNF care, and subsequent recertifications at intervals of not more than 30 days.

(k) Study of Hospital-based and Free-standing Skilled Nursing Facilities--No provision.

(l) Home Health Paperwork Study--No provision.

Explanation of provision.--(a) Standards for Hospital Care of the Medically Indigent--Medicare-participating hospitals would be required to participate in a State Medicaid program, unless this requirement was waived by the Secretary in order to implement a Medicaid demonstration program.

Peer Review Organizations (PROs) would be required to monitor hospital treatment of medically indigent individuals. If the PRO found that the hospital had discharged an individual before it was medically appropriate, or refused medically-necessary care to a low-income person, a person without health insurance coverage, a person suffering catastrophic expenses, or a person otherwise unable to pay, the PRO would be required to so report to the Secretary. The Secretary could either deny payment to the hospital for services under Part A or require the hospital to take such corrective action as necessary to prevent or correct the inappropriate practice.

The Prospective Payment Assessment Commission (ProPAC) would be directed to develop a method for calculating the amount of uncompensated care provided by a hospital. ProPAC would be directed to do so in a manner consistent with the definition of bad debt and charity care developed by the Secretary under the hospital uniform reporting demonstration project.

(b) Extension of Waiver for Finger Lakes Area Hospital's Corporation--The test for continuation of the FLAHC waiver would be modified such that aggregate payments made by Medicare under the FLAHC system since October 1, 1983 would be compared to payments made since that date under the national system.

(c) Information on Accreditation--Each hospital which is deemed to meet the conditions of participation in Medicare due to accreditation by the JCAHO would be required to agree in general to release by JCAHO of all accreditation surveys and other related information to the Secretary. However, this information would be limited to accreditation reports and other reports directly related to an accreditation report, including corrective action plans.

As authorized by the hospitals, the JCAHO would be explicitly required to release surveys and related information to the Secretary. The Secretary would be authorized to withdraw deemed status from a hospital based on any information he has received as to significant deficiencies, rather than only on information discovered in a validation survey. The Secretary would only be authorized to release accreditation reports and related information if the material related to an enforcement action taken by the Secretary.

(d) Hospital Bad Debt Collection Policies--The existing prohibition on changes in bad debt collection policy would be further clarified by specifying that if a fiscal intermediary had accepted a hospital's bad debt collection policy prior to August 1, 1987, in accordance with the rules in effect at that time with respect to criteria for indigency determination procedures, for record keeping, and for determining whether to refer a claim to an external collection agency, the Secretary could not direct the hospital to change its policy, nor collect retroactively from the hospital based upon the expectation of a change in the hospital's collection policy.

(e) Periodic Interim Payment for Merged Hospitals--A hospital currently receiving periodic interim payments which merged with another hospital, thus creating a new entity, would continue to receive periodic interim payments if both of the new entity's hospital campuses would qualify for periodic interim payments due to each having a disproportionate share adjustment percentage above 5.1 if assessed separately as of the time when the merger occurs.

(f) Inner City Hospital Triage Demonstration Project--The Secretary would be authorized to establish one project in an inner city public hospital which has already established a triage effort. Highland General Hospital in Alameda County, California has established such a triage effort. Under the demonstration, the Secretary would be authorized to define as reasonable cost and pay on a cost pass-through basis the following, up to $500,000 per year in additional cost: the cost of medical, nursing, and management personnel providing trauma and emergency services to patients who might otherwise be denied care through the triage system, as well as the costs of operating the triage system, and the costs of training hospital personnel in its operation.

(g) Cancer Center Treatment Demonstration Project and Study--Cancer center treatment demonstration projects would be authorized in two cancer center hospitals. Under the demonstration reimbursement would be authorized for experimental treatment under research protocols which: a) were registered with the National Cancer Institute; b) involved only drugs approved by the Food and Drug Administration for clinical trials, if experimental drugs were involved in the protocol; and, c) were approved by the hospital's patient protection committee. The Secretary would be required to designate the two demonstration project cancer center hospitals within six months of enactment.

The Office of Technology Assessment (OTA) would be directed to conduct a study of the appropriateness of Medicare reimbursement for experimental treatment under research protocols, including the costs of such reimbursement, whether reimbursement for experimental treatment under research protocols should be limited to the cancer center hospitals, and what controls should be placed on such reimbursement if it were to be authorized. As a condition of designation under the demonstration project, the two selected cancer center hospitals would be required to share data and other information as necessary with OTA. The study would be required to be completed by June 1, 1991.

(h) Dentists as Hospital Medical Directors--If not inconsistent with state law, a dentist could be a medical staff director of a hospital.

(i) Home Health Waiver of Liability--For purposes of the presumptive waiver calculation, denials would not be treated as denied until either the home health agency fails to appeal the initial denial within the current 60 day period allowed for the appeal, or the fiscal intermediary issues a decision on reconsideration. The Secretary would be required to monitor the volume of denied claims and to report to the Congress if the volume of appealed denials is substantially increased.

(j) Certification and Recertification in Skilled Nursing Facilities--Nurse practitioners and clinical nurse specialists would be authorized to carry out certification and recertification activities for Medicare beneficiaries in skilled nursing facilities (SNFs) under the supervision (but not direct supervision) of a physician.

(k) Study of Hospital-based and Free-standing Skilled Nursing Facilities--The GAO would conduct a study to assess differences in costs and case-mix between free-standing and hospital-based skilled nursing facilities. The GAO would make recommendations concerning the payment differential between free-standing and hospital-based skilled nursing facilities. The GAO would submit results of the study to the Committee by June 1, 1990.

(l) Home Health Paperwork Study--The GAO would study the costs and justification for the current administrative requirements on Medicare certified home health agencies. The GAO study would also review the feasibility of eliminating the requirements for dual reporting to Medicare and Medicaid. The GAO would submit its report to the Committee by May 1, 1990.

Effective Date.--Paragraph (a) effective 180 days after the date of enactment; all other paragraphs effective upon enactment.

II. MEDICARE PART B PROVISIONS

6. REDUCTION IN PAYMENTS FOR CERTAIN PHYSICIAN SERVICES

Present Law.--(a) Overpriced Procedures--OBRA '86 provided for a 10 percent across the board reduction in the prevailing charges for cataract surgery. OBRA '87 provided for reductions in the prevailing charges of 11 procedures by two percent plus a sliding scale reduction of up to 15 percent. Prevailing charges for overpriced procedures could not be reduced below 85 percent of the national average reduced prevailing charge. The overpriced procedures were identified by the Physician Payment Review Commission (PhysPRC).

Special Limits on Actual Charges--OBRA '86 provided for special limits on the actual charges for procedures whose prevailing charges had been subject to reductions under the Secretary's authority to impose reductions for "inherent reasonableness". These special limits were imposed on the actual charges for overpriced procedures reduced under OBRA '86 and OBRA '87. These special limits provided that during the first year following a reduction in overpriced procedures, actual charges were limited to halfway between 125 percent of the reduced prevailing charge and the previous year's limit on actual charges, known as the maximum actual allowable charge (MAAC) limit. In the second year, the limit on actual charges is 125 percent of the reduced prevailing charge.

(b) Reductions in Payments Under the Radiology Fee Schedule--OBRA '87 established a fee schedule for radiology services based on a relative value scale. Payments for radiology services are based on the lesser of 1) actual charges and 2) a local conversion factor times the number of relative value units assigned to each procedure. The fee schedule applies to services provided by radiologists (board-certified or board-eligible radiologists, or to physicians for whom one-half of their Medicare charges are for radiology services).

Radiology services billed by other physicians are reimbursed under the "usual, customary, and prevailing" reasonable charge methodology.

Special Limits on Actual Charges--Actual charges for services reimbursed under the radiology fee schedule are limited to 125 percent of the fee schedule amount in 1989, 120 percent in 1990, and 115 percent in 1991.

OBRA '86 provided for special limits on the actual charges for procedures whose prevailing charges had been subject to reductions under the Secretary's "inherent reasonableness" authority. These special limits were imposed on the actual charges for overpriced procedures reduced under OBRA '86 and OBRA

'87. These special limits provided that during the first year following a reduction in overpriced procedures, actual charges were limited to halfway between 125 percent of the reduced prevailing and the previous year's limit on actual charges. In the second year, the limit on actual charges is 125 percent of the reduced prevailing charge.

(c) Anesthesiology Services--OBRA '87 provided for the development and establishment of an anesthesiology fee schedule based on a relative value scale for services rendered on or after January 1, 1989. OBRA '86 provided for direct reimbursement for the services of certified registered nurse anesthetists (CRNAs). Under regulations implementing the fee schedules for both anesthesiologists and CRNAs, the time for anesthesiology services is billed in 15-minute or 30-minute units, with partial units rounded up to the next full unit.

Explanation of Provision.--(a) Overpriced Procedures--Procedures would be identified as overpriced based on a comparison of PhysPRC simulated Resource Based Relative Value Scale (RB RVS) fees with estimated national average allowed charges. Procedures more than 15 percent overpriced, relative to the RB RVS fees, would be considered overpriced and subject to reductions under this provision.

The amount of the reduction for each procedure in each locality would be determined as follows: 1) 1989 national average allowed charges for the identified procedures would be reduced by the percentage difference between the estimated RB RVS national fees and the national average allowed payment amount; 2) local adjusted RB RVS fees would be calculated by adjusting the overhead proportion (46 percent) of the national average reduced allowed charge by a geographic practice cost index (GPCI); 3) the local prevailing charge for the service would be reduced by one-half the difference between the calculated local RB RVS fee and the local prevailing charge, up to a maximum of 15 percent. If the local prevailing charge was less than the local RB RVS fee, the local prevailing charge would not be changed. These calculations would be based on the best available data and estimates.

The Subcommittee intends that the list of overpriced procedures and the amounts by which they are overpriced would be included in the Committee report.

Special Limits on Actual Charges--The actual charges for services whose prevailing charges would be reduced under this provision would be subject to the same special limits on actual charges imposed on overpriced procedures under OBRA '86 and OBRA '87. The special limits on actual charges would not apply for services in localities wherein the prevailing charge was not reduced because it was at or below the estimated local RB RVS fee. The authority regarding these special limits would be extended, consistent with the compatible section in the physician payment reform provision.

(b) Reductions in Payments under the Radiology Fee Schedule--The local conversion factors used for payments under the radiology fee schedule would be reduced by up to 15 percent. The amount of the reduction in each locality would be calculated as follows: 1) the 1989 national average conversion factor would be reduced by eight percent; 2) a local reduced conversion factor amount would be estimated by adjusting the overhead portion (46 percent) of the reduced national average conversion factor by a GPCI; 3) the local conversion factor would be reduced to the calculated local amount, up to a maximum reduction of 15 percent. If the local conversion factor was less than the calculated local amount, the local conversion factor would not be changed.

The prevailing charges of radiology services not reimbursed under the fee schedule would be reduced to the fee schedule amount.

Special Limits on Actual Charges--The actual charges for radiology services not billed under the fee schedule whose prevailing charges would be reduced under this provision would be subject to the same special limits on actual charges imposed on overpriced procedures under
OBRA '86 and OBRA '87. The special limits on actual charges would not apply for radiology services not billed under the fee schedule in localities where the prevailing charges were not reduced because they were at or below the reduced radiology fee schedule amount.

(c) Anesthesiology Services--The time for anesthesiology services provided by physician anesthesiologists and CRNAs would be billed based on actual time.

Effective date.--Effective for services provided on or after April 1, 1990.

7. UPDATE FOR PHYSICIAN SERVICES

Present Law.--(a) Update--Customary and prevailing charge screens, fee schedules and MAAC limits on actual charges are updated January 1 of each year. In general, prevailing charges are updated by the percentage change in the Medicare Economic Index (MEI).

(b) Participation Agreements--Prior to each update, there is a participation period during which physicians and suppliers may elect to become participating physicians, thereby agreeing to accept assignment on all Medicare claims during the following participation period, usually one year in length.

Explanation of Provision.--(a) Update--The update for all physician charge screens, fee schedules, and limits would be delayed three months, to April 1, 1990. Primary care services would be updated by the full amount of the MEI. The update on April 1, 1990, would be two percent for other services, except radiology, anesthesiology, and services identified in this act as overpriced which would not be updated.

(b) Participation Agreements--Agreements in effect on December 31, 1989, would remain in effect for the three month period beginning January 1, 1990, unless the physician or supplier requests it be terminated. The participation period for 1990 would be the nine month period beginning April 1, 1990.

Effective date.--On enactment.

8. PHYSICIAN PAYMENT REFORM

Present Law.--(a) Resource Based Relative Value Scale --Payments to physicians are currently made under a reasonable charge methodology known as a "usual, customary and reasonable" (UCR) charge system. Under this system, the reasonable charge recognized by Medicare is the lesser of the actual charge for the service, the physician's own customary charge for the service, and the prevailing charge for the service by similar physicians in the same locality. The customary and prevailing charge screens are based on historical charge data. Radiology and anesthesiology claims are paid under uniform national relative value scales, with varying conversion factors among geographic localities. Medicare payments are 80 percent of the recognized reasonable charge amount.

(b) Overhead and Malpractice Components--No provision.

(c) Geographic Adjustment of Overhead and Malpractice Components--The current geographic variation in fees is due to historical patterns of charges under the UCR payment system.

(d) Conversion Factor--No provision.

(e) Phase In--No provision.

(f) Information on RB RVS Fees to Physicians--Prior to each participation period, the carriers mail a report to each physician that describes any limits on actual charges that may apply during the subsequent participation period.

(g) Expenditure Target--No provision.

(h) Updating Fees Under Expenditure Target Limit--Physicians' customary charges are updated each year to reflect increases in physicians' actual charges during a prior period. Prevailing charges are set by determining the level at which it exceeds 75 percent of customary charges. The increase in prevailing charges is limited by aggregate changes in the Medicare Economic Index (MEI) since a base year.

(i) Reporting Requirements for Carriers--The Secretary has provided for the establishment of performance standards for carriers and fiscal intermediaries who process Medicare claims. These standards are included within an evaluation plan known as the Contractor Performance and Evaluation Program (CPEP).

(j) Limits on Actual Charges--Nonparticipating physicians and suppliers may submit claims on either an assigned or unassigned basis. For unassigned claims, the beneficiary is liable for the difference between the Medicare reasonable charge and the actual charge for the service.

OBRA '86 provided for limits on the actual charges nonparticipating physicians. These limits are known as Maximum Allowable Actual Charges (MAAC). Physicians with actual charges for a particular service below 115 percent of the prevailing charge during a base period will have a MAAC for that service of 115 percent of the prevailing charge for nonparticipating physicians in 1990. Physicians with higher charges for a particular service during the base period may have a MAAC above 115 percent of the prevailing charge for nonparticipating physicians.

OBRA '87 provided for special limits on actual charges for radiology services paid under the radiology fee schedule and provided by nonparticipating physicians. The limits on actual charges for radiology services is 125 percent of the radiology fee schedule amount in 1989, 120 percent of the fee schedule amount in 1990, and 115 percent in 1991.

(k) GAO Study of Malpractice Component and Alternative Malpractice Resolution Procedures--No provision.

(l) Studies of Payments to Risk-contracting Organizations and Carve-Out from Expenditure Target System--Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) provided for payments to qualified health maintenance organizations on a monthly basis per beneficiary enrolled in each plan. The amount of the monthly capitation payment is based on the Adjusted Average Per Capita Cost (AAPCC). The AAPCC reflects Medicare expenditures in each locality for services provided by physicians and providers billing on a fee-for-service basis.

(m) Study of Electronic Billing--No provision.

(n) PhysPRC Study of Expenditure Targets--No provision.

(o) PhysPRC Study of Payment of Overhead--No provision.

Explanation of Provision.--(a) Resource Based Relative Value Scale Fee Schedule.--The Secretary would establish a Resource Based Relative Value Scale (RB RVS) fee schedule as the basis of payment for physician services under Medicare. For each procedure, the RB RVS fee schedule amount would be equal to a conversion factor times a relative value consisting of the sum of three components: 1) a relative work component established by the Secretary using the findings of the Hsiao Relative Value Study at Harvard University that reflects the time and intensity of physician resources used to provide the service; 2) an overhead component that reflects the overhead expenses (non-physician inputs) associated with providing each service, excluding malpractice expenses; and 3) a malpractice component that reflects malpractice expenses for each service. The three components of the RB RVS fee schedule would be combined using the "additive" model recommended by PhysPRC.

The relative work component would reflect activities prior to and after direct patient contact. For surgical procedures, the RB RVS would be based on a global fee concept that reflects a uniform definition of services included within each billable service. The Secretary would have discretion to establish the uniform national definitions of global surgical services and to establish an appropriate coding structure for physician visits. The RB RVS fees would not vary by physician specialty.

The Secretary would develop the RB RVS based on the results of the Hsiao study, as modified by PhysPRC, and other appropriate data. The Secretary would have discretion in establishing the RV RBS for low volume services and other services not considered in the Hsiao study. The Secretary would have authority to make any necessary assumptions in the calculations needed to establish the RB RVS fee schedule. The Secretary would have discretion to establish ancillary policies to make the fee schedule operational, such as policies regarding modifiers and local codes. The Subcommittee intends that the Secretary would consider the special circumstances of rural independent laboratories in determining the geographic adjustment in fees under the RB RVS.

Medicare payment would be 80 percent of the lesser of 1) the actual charge and 2) the RB RVS fee schedule amount, or the recognized fee schedule payment amount during the phase-in. The RB RVS fee schedule amount for primary care services provided in medically underserved areas would be 105 percent of the amount that would otherwise apply. The RB RVS fee schedule, and the recognized fee schedule payment amount during the phase-in, for nonparticipating physicians would be 95 percent of the amount that would apply for participating physicians as provided in current law.

(b) Overhead and Malpractice Components--The total of the overhead and malpractice components would represent 46 percent of the overall fee on a national average basis. The portion of each service accounted for by overhead and malpractice would be based on the average proportion of total practice revenues by specialty that each component represents, weighted by the proportion of Medicare services provided by each specialty. In establishing these figures, the Secretary would have discretion to use appropriate practice cost factors for specialties for which no reliable data exist, or to make appropriate adjustments for low volume procedures.

(c) Geographic Adjustment of Overhead and Malpractice Components--Local RB RVS fee schedule amounts would be based on the national RB RVS adjusted by a geographic practice cost index (GPCI) value for each payment area. The GPCI adjustment would apply only to the overhead and malpractice components of the fee.

The GPCI would reflect geographic differences in the cost of practice among payment areas. Each metropolitan statistical area

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(MSA) would be a separate payment area. All counties in each State not in an MSA would be separate payment area.

Pending further study and development of data sources, the Secretary would provide for a separate specialty and geographic adjustment for the malpractice component of the RB RVS fee schedule.

(d) Conversion Factor--The initial conversion factor would be determined by the Secretary and would be budget neutral to the estimated aggregate payments that would otherwise be made. Beginning in 1992, the conversion factor would be updated according to the expenditure target system described in items (g) and (h) below. The Secretary would be authorized to make adjustments to the conversion factor each year during the phase-in to maintain budget neutrality to the total amounts that would otherwise be paid.

(e) Phase In--The Secretary would determine average prevailing charges in each payment area, adjusted to reflect payments for services with charges below the prevailing charge level in the first year. If the average adjusted prevailing charge in an area is within 15 percent of the RB RVS fee schedule amount, the amount recognized for payment would be the RB RVS fee schedule amount.

For services more than 15 percent above the RB RVS fee schedule amount, the Medicare recognized fee schedule amount would be the average adjusted prevailing amount decreased by 15 percent in the first year. This amount would be reduced by an additional 15 percent each year until the RB RVS fee schedule amount is reached.

For services more than 15 percent below the RB RVS fee schedule amount, the Medicare recognized fee schedule amount would be the average adjusted prevailing amount increased by 15 percent in the first year. This amount would be increased by an additional 15 percent each year until the RB RVS fee schedule amount is reached.

The phase in would end on December 31, 1995. For all services provided on or after January 1, 1996, the recognized payment amount would be the RB RVS fee schedule.

(f) Information on RB RVS Fees to Physicians--Prior to the initial implementation of the RB RVS fee schedule, the Secretary would provide for a mailing to each physician that lists the RB RVS fees for commonly billed procedures in the payment area in which the physician is located. The list would indicate which fees are subject to the 15 percent limit on annual changes, the applicable extra billing limits, and would provide estimates of the budget neutral fees that would be recognized for each such service in the locality in the subsequent two years. This mailing could be coordinated with letters to physicians regarding enrollment as participating physicians.

(g) Expenditure Targets--Beginning with FY 1990, an national expenditure target amount would be set for each fiscal year. The expenditure target would reflect expenditures incurred during a prior period, increased by a target rate of growth. Services covered by the target would include all physician services, services commonly performed in physician offices (including all diagnostic laboratory and x-ray services), and services provided by non-physicians that are commonly performed by physicians. The target would exclude expenditures for capitation payments made to Section 1876 risk-contracting Health Maintenance Organizations.

For FY 1990, the rate of growth in the expenditure target level would be the estimated incurred expenditures for services covered by the target in FY 1989, increased by 10.0 percent. This target percentage is based on the percentage increase in expenditures between FY 1989, and estimated expenditures in FY 1990 (decreased by provisions in this legislation), minus 0.5 percent.

Each year beginning in 1990, the Secretary would, by February 1, recommend to the Congress a rate of growth in the expenditure target for the following fiscal year. In making his recommendation, the Secretary would consider inflation, growth and aging in the covered population, changes in medical technology, evidence of unnecessary utilization of services, evidence of lack of adequate access, and such other factors as the Secretary may consider appropriate.

The Subcommittee intends that, in developing his recommendation for the expenditure target for FY 1991, the Secretary would confer with the associations representing the major medical specialties. Following these consultations, the Secretary may, as a part of his recommendation on the target for FY 1991, recommend separate targets for the major types of services including surgery, primary care, services of the hospital-based specialties and other types of services as the Secretary determines are appropriate.

PhysPRC would review the Secretary's recommendation and, by May 1, make its own recommendation to Congress on the rate of growth in the expenditure target for the following fiscal year.

The rate of growth in the expenditure target each fiscal year would be enacted by Congress in statute. If no target rate of growth is enacted, the target for that fiscal year would be equal to the prior year's target level increased by the rate of general inflation (CPI) during the prior year and the predicted rate of increase in the population enrolled in Part B, but not enrolled with a Section 1876 risk-contracting Health Maintenance Organization.

After the end of each target period, the Secretary would be authorized to adjust the target to reflect enrollment in risk-contracting plans that differs from the basis used in setting the target.

For the purposes of estimating budget baselines, the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO) would assume that the expenditure targets would be set such that the prior year's target will be increased by the percentage that the prior year's target increased over the preceding year.

(h) Updating Fees Under Expenditure Target Limit--Beginning in 1992, the RB RVS fee schedule and other services included under the expenditure target system would be updated by the MEI (or other update index that may apply), increased or decreased by the percentage by which actual expenditures differed from the target amount during the target period as enacted by Congress. By February 1 of each year, the Secretary would recommend updates for the following calendar year based on the expenditures incurred during the target period ending the prior September 30th.

The Secretary would be given discretion to recommend differential updates or other adjustments to the fee schedule, by procedure or by groups of procedures. In making these recommendations, the Secretary would consider evidence of changes in volume or access to services in determining the need for such differential updates, and such other factors as the Secretary may consider to be appropriate. In determining any differential update or adjustment, the Secretary would be permitted to use such data as he deems appropriate. The recommended differential updates and adjustments would be budget neutral to the overall update subject to performance relative to the expenditure target.

PhysPRC would review the Secretary's recommended updates and adjustments and would make its recommendation to Congress by May 1 of each year.

Congress would enact the update each year after reviewing the recommendations of the Secretary and PhysPRC. In the event Congress does not enact an update, the Secretary would publish the final updates and adjustments by October 1 of each year. The overall effect of the final update and differential procedure updates and adjustments would be budget neutral to the aggregate update subject to performance relative to the expenditure target.

(i) Reporting Requirements for Carriers--The Secretary would establish requirements for carriers that would provide for monthly reporting to HCFA on expenditures and volume of services within the target, by procedure and physician specialty within each payment area. HCFA would establish procedures for providing such data on a monthly basis to PhysPRC, CBO, Congressional Research Service (CRS) and the Committee within 30 days. The

Secretary would include appropriate standards for reporting these data in the Contractor Performance and Evaluation Program (CPEP) used to evaluate carrier performance.

(j) Limits on Actual Charges--Provisions establishing the MAAC limits and special limits on overpriced procedures would be extended through December 31, 1990, without regard to when the Secretary issues his report on the RB RVS. Beginning January 1, 1991, new limits would be established on the actual charges of nonparticipating physicians.

For physicians with MAAC limits at or below 125 percent of the recognized payment amount for nonparticipating physicians in 1990, the limit on actual charges in 1991 would be the same percentage above the recognized payment amount as during 1990. For physicians with MAAC limits above 125 percent in 1990, the limit on actual charges in 1991 would be 125 percent of the recognized payment amount for nonparticipating physicians.

For physicians with limits on actual charges at or below 120 percent of the recognized payment amount for nonparticipating physicians in 1991, the limit on actual charges in 1992 would be the same percentage above the recognized payment amount as during 1991. For physicians with limits on actual charges above 120 percent in 1991, the limit on actual charges in 1992 would be 120 percent of the recognized payment amount for nonparticipating physicians.

The limits on actual charges for all nonparticipating physicians in 1993 would be 115 percent of recognized payment amount for nonparticipating physicians in 1993.

The Secretary would monitor changes in participation rates, extra billing amounts and assignment rates. The monitoring by the Secretary would be done by specialty, type of service, and geographic area. The Secretary would make annual reports to Congress regarding whether there are changes in assignment and participation rates, and in extra billing amounts. If significant changes occur, the Secretary would develop a plan for addressing the shifts and submit his recommendations regarding such plan to Congress. PhysPRC would review the Secretary's plan and recommendations and submit its comments to the Congress.

The Subcommittee intends that nothing in this section would prejudice the right of any State to require assignment on Medicare claims as a condition of licensure in the State.

The Subcommittee supports a prohibition of extra billing on claims for Medicare beneficiaries who are either eligible to receive benefits under the Medicaid program or to have Medicaid programs pay for Medicare's deductible and coinsurance amounts on their behalf.

The Subcommittee also supports requiring Medicaid programs to make Medicare coinsurance payments at 20 percent of the Medicare allowed amount and to make full payments for the Part B deductible, without regard to any lower payment limits that may apply under a State's Medicaid program. Medicaid legislation falls within the jurisdiction of the House Committee on Energy and Commerce.

(k) GAO Study of Malpractice Component and Alternative Malpractice Resolution Procedures--The GAO would conduct a study of alternative methods of paying physicians for Medicare's share of malpractice expenses.

The study would include consideration of paying these expenses on a "pass through" basis. The "pass through" approach would include requiring cost reports from each physician that describe total practice costs and revenues and Medicare's share of such costs and revenues. Medicare's payment would then be based on its share of malpractice expenses, paid on either an annual or quarterly basis. This study would also consider the potential impact of paying for malpractice expenses on a "pass through" basis on malpractice premiums.

The GAO study would also include examination of alternative malpractice claims resolution procedures for Medicare patients, including arbitration and no-fault procedures.

The GAO would report its findings and recommendations to the Committee by April 1, 1991.

The Subcommittee intends to hold hearings on alternative malpractice resolution procedures.

(l) Studies of Payments to Risk-contracting Organizations and Carve Out from Expenditure Target System--

(1) Study of Payments to Risk-contracting Plans--The Secretary would conduct a study of how payments under the Medicare RB RVS fee schedule, including adjustments in payments due to the expenditure target system, would effect payments to risk-contracting health maintenance organizations (HMOs). The Secretary would make recommendations to Congress regarding any modifications to the existing methodology for paying for services in risk-contracting organizations by April 1, 1990.

(2) Study of Carve-Out From Expenditure Target System--The Secretary would study and report on the feasibility and design of a carve-out for managed health care organizations from the expenditure target system. The study would consider alternative definitions of these entities, what requirements should be considered to insure that they would not underserve their patients, and what requirements should be considered to insure that these organizations could not shift care outside the organization in order to avoid having the services count toward the organization's target. The Secretary also would report on

the potential impact of such a policy on program expenditures and services. The Secretary would submit the results of this study and his recommendations to Congress by April 1, 1990.

(m) Study of Electronic Billing--The Secretary would study the feasibility and costs of providing for electronic submission of claims from participating physicians. The study should specifically consider options that include: next day payment for claims processed entirely by computer, direct deposit, and providing participating physicians with equipment and software to facilitate electronic submission of claims. The study may include consideration of other options for such a system.

The Secretary would report his findings and recommendations to Congress by January 1, 1991.

(n) PhysPRC Study of Expenditure Targets--PhysPRC would study the feasibility of establishing separate expenditure targets by geographic area (region, State or smaller area), by specialty or groups of specialties, or both. PhysPRC would also consider establishing expenditure targets by type of procedure, such as primary care, surgery, services of hospital based physicians, and other inpatient services. PhysPRC would also study the scope of services included and excluded from the expenditure target and make recommendations on any services that should be added to or deleted from the target system. In making its recommendations, PhysPRC should consider administrative issues. PhysPRC would report its findings and recommendations to the Committee by May 1, 1990.

(o) PhysPRC Study of Payment for Overhead--PhysPRC would study how the overhead component could vary between procedures or procedure groups and report its recommendations to the Committee by May 1, 1990.

Effective Date.--Paragraphs (a) through (e) are effective for services provided on or after October 1, 1991. Paragraph (h) is effective for updates to the fee schedule on or after January 1, 1992. All other paragraphs are effective upon enactment.

9. OTHER PHYSICIAN PROVISIONS

Present Law.--(a) New Physician Customary Charges--OBRA '87 provides that the customary charge screens of new physicians are set at a level no higher than 80 percent of the prevailing charge, as limited by the MEI, until the physician has been in practice long enough to accumulate sufficient charge data for the customary charge to be based on actual charge data. The limit does not apply to primary care services and services furnished in a rural health manpower shortage area.

(b) Designated Specialties--Current regulations provide that carriers take into account the existing patterns of charges by physicians in different specialties when determining prevailing charges. Many carriers have different prevailing charges for the same service when provided by different specialties.

Explanation of Provision.--(a) New Physician Customary Charges--The customary charges of new physicians limited under current law would be phased-in. They would not exceed 85 percent of the applicable prevailing charge for second year physicians, 90 percent for third year physicians, and 95 percent for fourth year physicians. These limits on customary charges would expire with implementation of the RB RVS fee schedule. Under the Subcommittee proposal, the RB RVS would be implemented on October 1, 1991, and so these limits would expire on September 30, 1991.

(b) Designated Specialties--The Secretary would designate a specialty for each commonly billed service. The specialty designated for each service would be either the specialty that performs the service most frequently on a national basis, or the specialty that is the recognized expert in the procedure. The prevailing charge of this specialty would be a cap on the prevailing charges of other specialties for the same service.

Effective date.--(a) New Physician Customary Charges--Applies to services provided on or after April 1, 1990.

(b) Designated Specialties--Applies to services provided on or after April 1, 1990.

10. PAYMENTS FOR HOSPITAL OUTPATIENT CAPITAL

Present Law.--For hospital outpatient department services which are paid either on a reasonable cost basis or on the basis of a blend of reasonable costs and charges, Medicare pays for hospital capital allocated to the outpatient department of the hospital at 100 percent of costs.

Explanation of Provision.--Medicare would pay for capital allocated to hospital outpatient departments at 85 percent of costs. When payments for hospital outpatient department services are paid on the basis of a blend, the cost portion of the blend would include allocated capital at 85 percent of costs.

Effective date.--Applies to payments for capital for hospital cost-reporting periods beginning during FY 1989.

11. PAYMENTS FOR DURABLE MEDICAL EQUIPMENT

Present Law.--(a) Durable Medical Equipment (DME) Rental Payments--The Omnibus Budget Reconciliation Act of 1987 (OBRA '87) defined six categories of DME and established fee schedules for each category. Payment for items in the "rental cap" category is only on a rental basis. Items in this category include wheel chairs and hospital beds. The rental amount in 1989 is ten percent of the purchase price of the item based on average submitted charges during a 12 month base period ending June 30, 1987 and updated by the percent increase in the Consumer Price Index (CPI) for the six month period ending December, 1987. Rental payments are made for up to 15 months, after which one payment is made every six months for servicing. Items in the category known as "frequently serviced items" are also made on a rental basis. These items are defined as equipment which requires frequent servicing to avoid danger to the patient and includes such items as ventilators, intermittent positive pressure breathing machines and vaporizers. Rental payments for these items are based on average allowed charges for the items during the same base period, updated by the same percentage change in the CPI. There is no limit on the number of months that the rental payments are made for "frequently serviced items."

(b) Payment for Oxygen Equipment and Supplies--OBRA '87 established a fee schedule for oxygen equipment and supplies. Payment for oxygen supplies and equipment is made on a monthly basis.

(c) Enteral Equipment--Payments for enteral equipment, intravenous poles and infusion pumps, are reimbursed on a reasonable charge basis, subject to certain special reimbursement limits.

(d) DME Update--Fee schedules for DME covered by section 1834(a) of the Social Security Act are updated each January 1 by the percentage change in the CPI for the 12 month period ending June 30 of the preceding year.

(e) National Cap on DME Fee Schedules--The DME fee schedules covered by section 1834(a) are currently based on carrier fee schedules.

(f) Inherent Reasonableness Authority--OBRA '87 provided that the Secretary was prohibited from using his "inherent reasonableness authority" to reduce payments for equipment paid under the fee schedules until January 1, 1991.

(g) Overpriced DME--No current provision.

(h) Limits on DME Suppliers--No current provision.

(i) Mandatory Assignment--DME claims may be submitted on either an assigned or nonassigned basis. DME suppliers may become participating suppliers by agreeing to accept assignment on all Medicare claims during a subsequent participation period. Diagnostic lab services are only a covered benefit if billed on an assigned basis. Physicians are prohibited from billing patients on a nonassigned basis for tests that would be covered if billed on an assigned basis. Physicians and suppliers who repeatedly bill patients for such tests on a nonassigned basis may be barred from the program for up to five years, are subject to civil money penalties of up to $2,000 per service billed on a nonassigned basis, or both.

(j) GAO Study of Standards for Appropriate Use of DME--No provision.

Explanation of Provision.--(a) DME Rental Payments.--The fee schedules for all categories of DME would be based on average allowed charges, rather than average submitted charges, during the base period. Rental payments for "rental cap" items and "frequently serviced items" would be based on 10 percent of the average allowed purchase price during the base period for the first three months of rental, and 7.5 percent of the average allowed purchase price during the fourth through fifteenth months of rental. No rental payments would be made after the fifteenth month. The Secretary would be required to establish a reasonable servicing fee for the "frequently serviced items." This fee would be paid at six month intervals after rental payments cease.

(b) Payment for Oxygen Equipment and Supplies--The fee schedule for oxygen equipment and supplies would be reduced by 5 percent.

(c) Enteral Equipment--Payments for enteral equipment would be based on the same rules that apply to other items of DME. That is, they would be based on fee schedules derived from average allowed charges during the base period for the appropriate category of DME.

(d) DME Update--The update for the DME fee schedules would be delayed until April 1, 1990. The update would be two percent.

(e) National Cap on DME Fee Schedules--The DME fee schedule amounts for each item would be capped at 95 percent of the median of the carrier fee schedules.

(f) Inherent Reasonableness Authority--The provision prohibiting use of the "inherent reasonableness authority" before January 1, 1991 would be deleted. The Secretary would be required to publish a list of DME items that he considers to be overpriced. Three months following publication of such list, the fee schedule amounts for the items listed would be reduced by 15 percent.

(g) Overpriced DME--The fee schedule amounts for seatlift chairs, motorized wheelchairs and scooters, and transcutaneous electrical nerve stimulation devices would be reduced by 15 percent from 1989 levels notwithstanding the other sections of this provision.

(h) Limits on DME Suppliers--Suppliers would be prohibited from providing Medicare medical necessity forms to patients. Suppliers would be required to disclose to Medicare carriers the identity of all persons with an ownership interest in the supplier (through equity, debt or other means) and to identify whether any such person is a physician. Carriers would be required to subject claims from DME suppliers with physician owners to a higher level of review than claims from other suppliers.

(i) Mandatory Assignment--Payments for DME equipment and supplies could only be made on an assigned basis. Suppliers would be prohibited from billing patients for equipment, supplies and servicing on a nonassigned basis. Suppliers who repeatedly bill patients for items, supplies and servicing on a nonassigned basis would be subject to exclusion from the program for up to five years, be subject to civil money penalties for each instance of billing on a nonassigned basis, or both.

(j) GAO Study of Standards for Appropriate Use of DME--The GAO would conduct a study of standards for appropriate use of durable medical equipment, including seatlift chairs. The GAO would convene a panel, including orthopedic, rehabilitation, arthritis and geriatric specialists and consumer representatives to provide recommendations of criteria for Medicare coverage of DME equipment and supplies. GAO shall review and evaluate the use of the Certificates of Medical Necessity issued by HCFA and used in medical necessity determinations for DME claims. The GAO shall report its recommendations to the Committee by April 1, 1990.

Effective dates.--Items (f) and (j) on enactment. All other provisions effective for services provided on or after April 1, 1990.

12. PAYMENTS FOR LABORATORY SERVICES

Present Law.--(a) Laboratory Fee Schedule Update--The laboratory fee schedules are updated each January 1 by the annual percentage change in the Consumer Price Index (CPI) over the preceding calendar year.

(b) National Cap on Laboratory Fee Schedules--The local laboratory fee schedules are subject to a national cap for each service set at 100 percent of the median of all carrier-wide fee schedules. Payments for these services would be based on a national fee schedule, effective January 1, 1990.

Explanation of provision.--(a) Laboratory Fee Schedule Update--The laboratory fee schedule update would be reduced to 2 percent.

(b) National Cap on Laboratory Fee Schedules--The cap on laboratory fee schedules would be reduced to 95 percent of the national median of the carrier-wide fee schedules. The national fee schedule would be delayed for two years.

Effective Date.--Applies to services provided on or after January 1, 1990.

13. MENTAL HEALTH SERVICES

Present Law.--(a) Psychologists--Services provided by psychologists are covered in risk-contracting Health Maintenance Organizations, community mental health centers and rural health clinics. Services of psychologists are not currently covered in other settings.

(b) Mental Health Limit--Medicare will pay only up to $1,100 in a calendar year for physician mental health services provided by either a psychiatrist or another doctor. In addition, there is a 50 percent co-payment required by the beneficiary for these services.

Explanation of provision.--(a) Psychologists--Payments would be made to psychologists for services in all settings. Psychologists would bill directly and be reimbursed on a reasonable charge basis. Psychologists could only bill for their services on an assignment related basis. The Secretary would provide that psychologists would agree to contact a patient's attending physician within a reasonable period of time to consider potential physical conditions that may be contributing to the patient's symptoms. The Subcommittee intends that such contact would not be a billable service.

The Subcommittee intends that the Secretary would implement and enforce this requirement in a manner that considers issues of patient confidentiality. The Subcommittee also intends that the attending physician would not act as a gatekeeper.

(b) Mental Health Limit--The current $1,100 limit on mental health services would be eliminated.

Effective Date.--January 1, 1990

14. PART B MISCELLANEOUS AND TECHNICAL PROVISIONS

Present Law.--(a) Certified Registered Nurse Anesthetists (CRNAs)--Effective January 1, 1989, the services of CRNAs are paid under a fee schedule. The current fee schedule provides for separate conversion factors depending on whether the CRNA is medically directed by a supervising physician. The conversion factors also vary by geographic area. The current average conversion factors are approximately $8.50 per unit for medically directed CRNA services and $14.00 for non-medically directed CRNA services. Assignment is mandatory. The current rules for payment, under a notice of a proposed rule published January 26, 1989, also eliminate payments for medical direction when provided by the physician performing the surgery.

(b) Payments to Community Health Centers--Under regulation, Medicare currently makes payment to Federally Funded Health Centers (FFHC). In general, these centers are those health care clinics receiving grants under sections 329 and 330 of the Public Health Service (PHS) Act. These sections provide for grants under the Community Health Center and Migrant Health Center programs. Centers receiving grants to provide services to the homeless under section 340 of the PHS Act do not qualify as an FFHC unless they are also receiving grants under either section 329 or 340.

Centers receiving grants under these sections are required to charge low-income patients for services on the basis of a sliding fee scale. Medicare currently pays for services provided in these centers on the basis of the lesser of costs or charges, even when the charges have been adjusted under required PHS sliding fee scales for low-income patients.

(c) Small Blood Labs--Section 1833(h)(3), as amended by section 8421 of the Technical and Miscellaneous Revenue Act of 1988, requires the Secretary to provide for a trip fee for qualifying laboratories to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect a sample for testing. Payments for trips by qualifying labs are for tests provided during the period beginning with April 1, 1989, and ending with December 31, 1990. To qualify for such payments, a lab must demonstrate to the Secretary that 1) it is dependant on Medicare for 80 percent of its revenue; 2) that at least 85 percent of its gross revenues are attributable to tests provided to nursing home or home bound patients; and 3) that the laboratory provides such test for at least 20 percent of the nursing home in the State in which the laboratory is located.

(d) Municipal Health Service Demonstration Waivers--Current law provides for a Medicare waiver for certain municipal health centers established under grants from the Robert Wood Johnson Foundation. Waiver centers are in California, Maryland, Ohio and Wisconsin. The existing waiver provides for cost-based payment for an expanded range of outpatient services including preventive care, optometric care, dental services, and prescription drugs. The waiver is scheduled to expire on December 31, 1989.

(e) Diabetic Shoe Inserts--OBRA '87 provided for a demonstration project of the cost-effectiveness of providing medicare coverage of custom-molded and extra-depth shoes and inserts for diabetics. Coverage is limited to one therapeutic shoe insert per year. Depending on evaluations of the demonstration project, coverage of these items may become effective.

(f) Study of Payments for Ambulance Services--No provision.

(g) PhysPRC Study of Payments for Assistants at Surgery--PhysPRC was established to make recommendations to Congress regarding payments for physician services.

(h) GAO Study of the Cost of Magnetic Resonance Imaging (MRI) Services--No provision.

(i) Study of Payments for Diagnostic Services to Detect Osteoporosis--No provision.

(j) ProPAC Study of Payments for Services in Hospital Outpatient Departments--The Secretary is required to develop a prospective payment system for ambulatory surgery services furnished in hospital outpatient departments by 1989 and for all other services by 1991. The Prospective Payment Assessment Commission (ProPAC) is required to provide its views on the Secretary's reports.

Explanation of Provision.--(a) Certified Registered Nurse Anesthetists--The CRNA conversion factors would be set at national rates of $14 for medically directed services and $21 for non-medically directed services. The conversion factors would be subject to a cap in each local area equal to the conversion factor that applies for physician anesthesiology services. The cap would not apply to CRNA services provided in facilities in which there are no physician anesthesiologists providing anesthesiology services. The regulation eliminating fees for medical direction of CRNAs by the performing surgeon would be codified.

(b) Payments to Community Health Centers--Medicare payments to FFHCs would be codified. FFHCs would be defined as: 1) centers receiving grants under any of sections 329, 330 and 340 of the PHS Act; 2) centers receiving payments as an FFHC as of January 1, 1989; and 3) centers that meet all PHS requirements to be eligible to receive such grants, whether or not they are actually required funds under these sections. The Secretary would be required to establish procedures for qualifying centers as meeting all of the PHS requirements.

Payment for services provided in FFHCs would be based on an all-inclusive rate established by the Secretary. Medicare would pay 80 percent of the all-inclusive rate without regard to the actual charge for the service. Payments would be made without regard to the Part B deductible. Coinsurance amounts would be equal to the difference between the actual charge for the service and Medicare's payment, but not more than 20 percent of the all-inclusive rate. FFHCs would be given a safe harbor from criminal or civil violations under Medicare's anti-kickback rules where an FFHC gave a low-income beneficiary, who qualifies for services subsidized under the PHS Act, a partial or full waiver of Medicare coinsurance amounts based on a PHS mandated sliding fee scale.

(c) Small Blood Labs--The Secretary would be required to provide for a trip fee for qualifying laboratories to cover the transportation and personnel expenses for trained personnel to travel to a nursing home or the home of a home bound individual to collect a sample for testing. To qualify for such payments, a lab must demonstrate to the Secretary that at least 85 percent of its Medicare revenues are attributable to tests provided to nursing home or home bound patients. Payments for trips would only be made when the test is requested by the ordering physician on an emergency or "stat" basis.

(d) Municipal Health Service Demonstration Waivers--The existing waiver would be extended for four years, to December 31, 1993. HCFA would be required to study and report on the waiver program with respect to quality of health care, beneficiary costs, and such other factors as may be appropriate.

(e) Diabetic Shoe Inserts--In the therapeutic shoe demonstration project, payment would be allowed annually for either one pair of custom-molded shoes with inserts and two additional pairs of inserts, or one pair of extra-depth shoes with up to three pairs of inserts for these shoes. The cost of custom-molded shoes with the initial insert is limited to $300, the cost of extra-depth shoes is limited to $100, and inserts are limited to $50 per pair.

The Secretary would be allowed to substitute the modification of custom-molded or extra-depth shoes for one or more pairs of shoe inserts, as long as no more would be spent than otherwise would have been spent for shoe inserts.

(f) The Secretary would conduct a study of the adequacy and appropriateness of payments for ambulance services. The study would examine: 1) the effect of current payments on the availability of ambulance services in rural areas; 2) the relationship of payments to the direct and indirect costs of providing services by level of services and by type of ambulance provider; and
3) comparisons of payments for ambulance services by public and private insurers. The Secretary would report his findings within

one year of enactment. This report would include such recommendations as may be needed to ensure access to ambulance services.

(g) PhysPRC Study of Payments for Assistants at Surgery--PhysPRC would conduct a study of payments for assistants at surgery. The study would examine: 1) the necessity and appropriateness of using an assistant at surgery, and 2) the use of physician and non-physician assistants at surgery. The Commission would report its findings and recommendations to the Committee by May 1, 1990.

(h) GAO Study of the Cost of Magnetic Resonance Imaging (MRI) Services--GAO would conduct a study that compares payments and costs for MRI services. The GAO would report its findings and recommendations by July 1, 1990.

(i) Study of Payments for Diagnostic Services to Detect Osteoporosis--The Office of Technology Assessment (OTA) would be requested to add diagnostic tests that may be used in screening for osteoporosis in its study of the effectiveness and costs of providing selective preventive services to Medicare beneficiaries.

(j) ProPAC Study of Payments for Services in Hospital Outpatient Departments--ProPAC would conduct a study of factors related to the rapid growth in payments for services provided in hospital outpatient departments. The study would include consideration of the effects on outpatient hospital costs of the stepdown method used to allocate hospital capital between inpatient and outpatient departments. The study also would assess the extent to which hospital outpatient costs were effected by implementation of the PPS and increased PRO reviews. ProPAC would report its findings from this phase of its study by March 1, 1990.

The second phase of this study would examine alternative methods for reimbursing hospitals for services in outpatient departments. Such alternative methods of payment would include prospective payment methods, fee schedules, and such other methods as ProPAC may consider appropriate. ProPAC would report its findings to the Committee, including recommendations on how the growth in payments for these services could be contained by March 1, 1991.

Effective Dates.--Paragraphs (a) and (b) are effective for services provided on or after April 1, 1990. Paragraph (c) is effective for services provided on or after on January 1, 1990. Paragraphs (d) through (j) are effective upon date of enactment.

III. MEDICARE PART A AND PART B PROVISIONS

15. PAYMENT DELAY

Present Law.--Claims by providers for services rendered to Medicare beneficiaries received in FY 1989 may not be paid after receipt before a period of 14 days has expired. In addition, 95% of clean claims must be paid within 25 calendar days in FY 1989 and 24 days in FY 1990 for all but participating doctors. The ceilings for participating doctors are 18 days in FY 89 and 17 days in FY 90.

Explanation of provision.--Claims by providers received in FY 1990 would be held sixteen days prior to payment. Ceilings would be extended to 26 days for all but participating physicians and 21 days in the case of participating physicians.

The Subcommittee wishes to clarify with respect to payments by Medicare that providers may use Medicare receivables as collateral for loans, as long as payment by Medicare is always made directly to the provider. For example, a provider may agree with a lender to remit receivables from Medicare as soon as they are received by the provider. In this case Medicare would not recognize any payment obligation to the lender.

Effective Date.--October 1, 1989

16. MEDICARE SECONDARY PAYER

Present Law.--(a) Identification of Medicare Secondary Payer Situations--Medicare is a secondary payer under specified circumstances when individuals are covered by other third party payers. Medicare is secondary payer to automobile, medical, no-fault and liability insurance, and to employer health plans.

Medicare is secondary payer to certain employer health plans for aged and disabled beneficiaries. Medicare is also secondary payer to employer group health plans for items and services provided to end stage renal disease (ESRD) beneficiaries during the first 12 months of a beneficiary's entitlement to Medicare on the basis of ESRD. The Department of Health and Human Services (HHS) currently identifies Medicare secondary payer cases in the following ways: beneficiary questionnaires, provider identification of third party coverage when services are provided and data transfers with other Federal and State agencies. According to HHS, no more than two-thirds of Medicare secondary payer cases are identified through these means.

Medicare contractors are currently covered under the Privacy Act because they routinely handle beneficiary-specific information, including medical history and social security numbers. Medicare contractors are currently prohibited from unauthorized disclosure of this information, subject to criminal penalties.

The Internal Revenue Code prohibits disclosure of tax returns and return information of taxpayers, with exceptions for authorized disclosure to certain Governmental entities in certain enumerated instances. No disclosure is allowed to third parties, such as employers and private insurers. Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both. An action for civil damages also may be brought for unauthorized disclosure.

Any authorized recipient of return information must maintain a system of safeguards to protect against unauthorized disclosure of the information.

b) Liens Against Liability Insurance--Medicare is secondary payer to liability insurance. In cases involving liability insurance, providers are instructed to bill Medicare first for conditional payments, and Medicare subsequently recovers its costs from the liability insurer of the person who caused the injury.

c) Penalties for Non-Compliance--A variety of penalties exist to enforce compliance with the secondary payer provisions. Employers who do not comply with the working disabled provisions are subject to an excise tax equal to 25 percent of the group health plans' expenses. Failure to comply with the working aged provisions is a violation of the Age Discrimination Act. Employers who violate the secondary payer provisions for ESRD beneficiaries can lose their tax deduction for group health expenses.

d) Workman's Compensation and Liability Payments-- Although payments under the working aged, disabled and ESRD secondary payer provisions are credited toward the Part A and B deductibles, payments from Workman's Compensation or liability and related insurance are not counted toward the Medicare deductibles.

e) Special Enrollment Period for Medicare--Aged individuals are currently entitled to a special enrollment period for Medicare if they are covered under a group health plan. Under current law, disabled individuals are entitled to a special enrollment period only if they are covered under a large group health plan.

f) Carrier Contracts--Under current law, the Secretary may terminate an agreement with a fiscal intermediary or carrier if he finds after applying standards and criteria regarding overall performance of claims processing and overall performance, the agency has failed substantially to carry out the agreement, or the functions provided for in the agreement with the fiscal intermediary is disadvantageous or is inconsistent with the efficient administration of this part.

Explanation of provision.--(a) Identification of Medicare Secondary Payer Situations--IRS and SSA would provide information to the Health Care Financing Administration (HCFA) to improve identification and collection of Medicare secondary payer cases. SSA would provide the IRS with the names and Social Security numbers of all Medicare beneficiaries. The IRS would provide SSA with a file of the names and Social Security numbers of all Medicare beneficiaries who filed a tax return for the previous calendar year. Information on spouses would be linked for individuals filing joint or individual returns to enable HCFA to identify the spouses of beneficiaries who may be covered by an employer health plan.

Information provided by IRS to SSA would be matched by SSA against the Master Earnings File to determine whether a W-2 had been filed for the beneficiary or the beneficiary's spouse. SSA would provide HCFA with a listing of all Medicare beneficiaries and their spouses, and the name of the beneficiary's or spouse's employer if: 1) the beneficiary and/or spouse filed a W-2, and 2) the beneficiary and/or spouse was employed by a large employer, defined as an employer with 20 or more employees.

HCFA would use this listing provided by SSA to identify more thoroughly secondary payer cases, including Medicare beneficiaries with employer-provided health coverage through the spouse's employment. HHS's contractors would use this new information to contact employers in writing to determine whether the employer provided health coverage and the date of such coverage. Current restrictions on the disclosure of information under the Internal Revenue Code and the Privacy Act would also apply to the new information provided by SSA and IRS to HCFA.

Third party payers, such as Medicare carriers and employers, receiving taxpayer information from HHS would be subject to restrictions and safeguards on disclosure, and subject to penalties for unauthorized disclosure similar to those restrictions, safeguards and penalties currently provided in the Internal Revenue Code with respect to other authorized recipients of taxpayer information.

To enable HHS to verify employer-provided health coverage, employers would be required to respond to HCFA inquiries within 30 days of receiving the letter. HCFA would pay as secondary payer on all claims for beneficiaries currently covered by an employer health plan. Payments would be recovered from private insurers for claims erroneously paid for beneficiaries if the claim was submitted at a time when the beneficiary was covered by an employer health plan.

This provision would expire on September 30, 1991.

b) Prohibit Liens Against Liability Insurance--In situations where Medicare is the secondary payer rather than the primary payer, providers (under provider participation agreements) and physicians or suppliers (under participating physician and participating supplier agreements) would be prohibited from the filing liens against liability settlements and awards and from collecting more than deductibles and coinsurance from beneficiaries that have received a liability payments.

This provision would also prohibit such providers, physicians and suppliers from collecting more than deductibles and coinsurance--even when Medicare would not make a payment because the primary insurer has paid at least as much as the Medicare rate.

c) Penalties for Non-Complying Employers--Non-complying employers would face an excise tax equal to 25 percent of the group health plans' expenses. The Secretary would have the right to action with provisions for double damages to enforce all secondary payer provisions.

d) Workman's Compensation and Liability Payments--Payments under Workman's Compensation or liability and related insurance would be credited toward the Medicare deductibles.

e) Special Enrollment Period for Medicare--The special enrollment period for the disabled covered by an employer health plan would be made comparable to the special enrollment period for the aged covered under a group health plan.

f) Carrier Contracts--The Secretary would be prohibited from requiring Medicare contractors to cross-match data files to identify secondary payer cases as a condition of remaining a contractor.

Effective Date.--Paragraphs (a),(b),(c),(d) and (f) are effective upon date of enactment. Paragraph (e) is effective January 1, 1990.

17. END STAGE RENAL DISEASE

Present Law.--(a) Method I--Under Method I, hospital and free-standing facilities are paid a composite rate that takes into account the proportion of patients dialyzing at home. Under the composite rate, the average base payment is $125 per treatment in free-standing facilities and $129 per treatment in hospital units. Beginning in FY 1989, the Secretary of Health and Human Services has the authority to adjust payment rates.

(b) Method II--Under Method II, the beneficiary makes his own arrangements to receive home dialysis equipment, supplies and support services. The beneficiary (or supplier if assignment is taken) is paid directly based upon itemized bills and reasonable charges.

(c) End Stage Renal Disease (ESRD) Quality and Patients' Rights--The Secretary makes payments to providers of ESRD services and renal dialysis services which meet such requirements as he has by regulation provided. Over time, the Secretary has established regulations pertaining to standards for staff, physical plant and patient rights. In addition, to help assure the effective and efficient administration of ESRD benefits, the Secretary is authorized to establish ESRD network areas.

The network organizations of each network are responsible for: 1) encouraging use of those treatment settings most compatible with the successful rehabilitation of the patients that are consistent with sound medical practice; 2) developing criteria and standards relating to quality and appropriateness of patient care; 3) evaluating the procedures by which facilities and providers in the network assess the appropriateness of patients for proposed treatment modalities; 4) implementing a procedure for evaluating and resolving patient grievances; 5) conducting on site reviews of facilities and providers as necessary as determined by a medical review board or the Secretary; 6) collecting, validating and analyzing data as necessary to prepare reports and to assure the maintenance of the ESRD registry; 7) identifying facilities and providers that are not cooperating toward meeting network goals and assisting facilities in developing appropriate plans for correction.

If the Secretary determines that a facility or provider has consistently failed to cooperate with network plans and goals or to follow the recommendations of the medical review board, he may terminate or withhold certification of such facility or provider until he determines that such provider or facility is making reasonable and appropriate efforts to cooperate with the network's plans and goals. If the Secretary determines that the facility's or provider's failure to cooperate with network plans does not jeopardize patient health or safety or justify termination of certification, he may, after reasonable notice to the facility or provider and to the public, impose other sanctions as he determines to be appropriate.

(d) Erythropoietin (EPO)--Certain drugs that are not self-administered are covered as part of the ESRD benefit. The costs of drugs that are consistently provided as part of the dialysis procedure are included in the composite rate. Other drugs, which are not consistently provided but are still medically necessary, are billed on a fee-for-service basis outside of the composite rate.

Explanation of provision.--(a) Method I--The current Medicare composite payment rate for renal facilities would be maintained for FY 1990.

The OTA would conduct a study to determine the cost of providing various modalities of dialysis treatments to Medicare beneficiaries and would recommend the level at which the composite rate should be established in FY 1991 and the methodology for establishing updates thereafter. The report would be submitted to the Committee on Ways and Means by June 1,1990.

(b) Method II--The Method II payment rate, based upon itemized bills and reasonable charges, would be capped at the Method I payment level. Medicare beneficiaries who receive treatments that are reimbursed under Method II would be required to obtain a formal written agreement with one supplier and the supplier would be required to accept assignment. These beneficiaries would also be required to sign a written agreement with a local Medicare-approved ESRD facility, stating that the facility would provide all necessary home dialysis support services and would serve as back-up to in-facility dialysis services when necessary.

(c) End Stage Renal Disease Quality and Patients' Rights--As a condition for participation, renal dialysis facilities and providers of services would be required to inform patients of their rights as soon as feasible but no later than 30 days after the beginning of a patient's dialysis program or course of treatment and upon the patient's reasonable request thereafter.

Facilities and providers would be required to inform patients of the following: 1) their rights regarding grievance procedures; 2) the services available in the facility and of related charges; 3) the facility's responsibility for continuing the patient in the dialysis program and of the specific circumstances that may result in termination of treatment; 4) the name of the physician who has primary responsibility for coordinating the patient's care and the names and professional relationship of any other physicians who see the patient, and 5) information from the network organization about facilities inside the region that offer home or self-care dialysis and flexible arrangements for patients, and about facilities outside the region that are available to transient patients.

In addition, facilities would be required to inform patients, if requested, about the relationships of the facility to other organizations, corporations or institutions, including disclosure of any physicians involved in the patients' care who have a fiduciary relationship with the facility. Facilities would also be required, if requested, to provide patients with access to the patient's own medical records maintained by the facility in accordance with State law.

Each facility and provider of service would be required to inform patients at regular intervals, through a physician, about their medical condition, unless medically contraindicated. Facilities would be required to transmit information concerning the patient's medical condition to third parties, if requested by the patient or if medically necessary.

On an annual basis, a facility would be required to provide an evaluation of the patient's suitability as a candidate for kidney transplantation, peritoneal, or self-care dialysis, and maintain appropriate documentation of the evaluation in the patient's medical record. A physician would also be required to provide each patient, except in the case of emergency, with as much information as possible about any proposed treatment, including any experimental procedure or procedure involving reuse as the patient may need to give informed consent for or to refuse treatment. Such information should include a description of the procedure or treatment, the medically significant risks involved in the procedure or treatment, alternative treatments or nontreatment, and the risks associated with each, and the name of the person who will carry out the procedure or treatment.

The facility would be prohibited from refusing to treat a patient because the patient seeks other medical opinions.

The facility would allow patients to refuse treatment, without jeopardy to the facility, if the facility has informed the patient and the patient is aware of the medical consequences of refusing treatment, to the extent permitted by law.

The facility would be required to provide each patient with a written plan of care developed by the patient's physician which assures a reasonable continuity of care and which includes designation of the agreed-upon treatment modality, advance notice of the time and location of appointments for dialysis treatment, and designation of the physician responsible for the care.

Facilities and providers of service may require patients to sign a statement that affirms that the patient has been informed of his or her rights, understands the various treatment options and has consented to the written plan of care.

A facility would be required to treat each patient with consideration and respect and to promote each patient's rights, including the right to privacy with regard to accommodations, medical treatment and visits, and the right to receive services with reasonable accommodation of individual needs and preferences.

A facility would be permitted to transfer or discharge a patient only for medical reasons, the patient's welfare, the welfare of other patients or staff, for non-payment of fees or if the facility ceases to operate. Facilities would be required to provide each patient with advance notice of a transfer or discharge. Facilities would be permitted to transfer a patient if: (a) it is a new or medically unstable patient, and the facility is required either contractually or under State or local law to transfer such a patient to another setting, or (b) if in accordance with the facility's written policy regarding routine transfers or discharges; however, grounds for discharge or transfer in the written policy would not include: 1) the filing of a grievance or legal complaint; 2) refusal to agree to reuse of artificial kidneys or other supplies, if the patient's refusal is based upon the written advice of a nephrologist indicating overriding medical reasons that preclude reuse

A facility would be required to ensure the confidential treatment of the patient's personal and medical records, and may not release any such records to any person outside the facility without the patient's consent, except in the case of the patient's transfer to another health care institution as required for the proper administration of the ESRD program.

A facility would be required to provide, during dialysis treatment at the facility, for a registered professional nurse experienced in dialysis therapy to direct technicians providing treatment.

A facility would be prohibited from interfering with the right of patients to form patient councils or committees to discuss common concerns.

Facilities that provide services to a significant number of patients whose primary language is not English would be required to ensure that information is provided in a language and in a form that is understood by such patients.

Where necessary, the rights of patients would be extended to persons who have legal responsibility to make decisions regarding medical care on behalf of the patient.

Facilities would be required to establish policies and procedures for the resolution of patients' concerns and conflicts. Facilities would be required to permit patients to state grievances and recommend changes in policies and services without fear of reprisal.

Survey and Certification of Facilities--Each state would be responsible for certifying the compliance of renal dialysis facilities and providers of services providing renal dialysis services with the requirements of the ESRD program. States would conduct, in collaboration with the network administrative organization, periodic educational programs for the staff and patients of such facilities in order to present current regulations, procedures and policies. The States would assure that the network administrative organizations receive survey findings for facilities and providers of service found to be out of compliance.

Facilities would be surveyed by States on an annual basis beginning in 1992 and without any prior notice to the facility. Upon change of ownership, administration or management, a standard survey may be conducted within two months of a change.

The standard survey would include an assessment of the quality of care furnished, an assessment of the facility's internal quality assurance program and a review of the facility's staffing, in-service training, and if appropriate, contracts with consultants. Also included in the survey, for a sample of patients, would be a review of the facility's written plan of care and a review of patient records for items such as potential for transplantation or home care, excessive or unnecessary dialysis, hospitalizations, recurrent pericarditis and infections. The survey would also include a review of the facility's compliance with requirements regarding patient's rights. Surveys would include interviews with patients to evaluate satisfaction with the care provided. Finally, to evaluate quality of care, the survey would review the records of all patients who experienced an adverse outcome, e.g.,the patient was admitted to a hospital or died during treatment.

Facilities found to be out of compliance with the standard survey would be subjected to an extended survey. The extended survey would be conducted no later than two weeks after completing the standard survey. Any other facility may, at the Secretary's or the State's discretion, be subject to an extended survey.

The extended survey would review and identify the policies, procedures and quality assurance systems that produced such substandard quality of care and would determine whether the facility was in compliance with standards. The extended survey would evaluate the extent to which the facility had developed a plan of correction and had acted to implement such a plan.

Each state and the Secretary would be required to make available to the public information regarding all surveys and certifications of facilities, including statements of deficiencies and copies of cost reports.

States would be required to notify the physician responsible for each patient's care if the survey determines that the facility has provided substandard quality of care. The state would notify the physician if and when the facility has established a plan to correct deficiencies.

Enforcement--If the State finds, based upon the standard or extended survey, that the facility or provider of service does not meet specified standards, and that the facility's deficiencies do not jeopardize health and safety of its residents, the Secretary would be authorized to take one of the following actions: 1) denial of payment; 2) impose civil monetary penalties, and 3) appoint a temporary manager.

If the State finds, based upon the standard or extended survey, that the facility or provider of service does not meet specified standards, and that the facility's deficiencies jeopardize the health and safety of its residents, the Secretary would take immediate action to remove the jeopardy and correct deficiencies, and would be authorized to terminate the facility's participation or deny payments, impose civil monetary penalties, and appoint a temporary manager to assure the health and safety of the patients. The temporary manager would have minimum qualifications of being an experienced facility administrator or licensed nephrologist within the state. These enforcement provisions would be effective beginning with the survey of facilities, beginning in 1992.

Advisory Board--The Secretary would be required to establish an 11 member advisory panel, comprised of an ESRD patient, a nephrologist, a renal facility administrator, a transplant surgeon, a nephrology nurse, a dialysis technician, a nephrology social worker, a renal nutritionist, a representative of a network administrative organization and at least one expert in quality assessment and assurance. The advisory panel would make recommendations to the Secretary regarding quality standards for the various methods of treatment of end stage renal disease by December 31, 1990.

The advisory board would develop and test protocols for standard and extended surveys, develop minimum qualifications for members of survey teams, and develop uniform national instructional guidelines for surveyors and renal dialysis facilities and providers of services.

The advisory board would make recommendations to the Secretary by December 31, 1990 concerning standards, protocols, qualifications and guidelines. The Secretary would implement recommendations as he deems appropriate by January 1, 1992, and notify the Committee on Ways and Means upon date of implementation. In 1992 and in 1994, the advisory board would report to the Secretary with recommendations to update quality standards, an assessment of the implementation of patient protection and quality assurance recommendations, and an assessment of the extent to which recommendations concerning patient protection and quality assurance should be revised.

Awards of Excellence--States would be encouraged to make annual awards of excellence to facilities that have achieved outstanding quality on the basis of standards established by the states.

ESRD Network Administrative Organizations--Upon request, the Networks would assist those facilities, providers and suppliers found out of compliance with quality standards to develop appropriate plans for correction. The Network Administrative Organizations would encourage and develop network goals with respect to the placement of patients in self-care settings and transplantation, with special attention to correcting underrepresentation of minorities in transplantation and self-care options, and the participation of patients in vocational rehabilitation programs.

The Network Administrative Organizations would conduct studies to verify that facilities are assessing patients for appropriate placement in the most medically suitable modality for the patient and to determine the number of patients who have returned to employment. The Networks would also verify the implementation of an internal grievance mechanism by each facility, and furnish to the States the findings of the investigations of patient grievances than indicate noncompliance with quality standards.

The Network Administrative Organizations would collect, validate and analyze data necessary to assure the maintenance of an ESRD registry and to help develop or evaluate indices of quality care. The Networks would submit annual reports to the Secretary that would include a statement of the network's goals and data on the network's performance in meeting its goals, and other information that the Secretary may require. Provisions relating the networks would be effective 6 months after date of enactment.

(d) Erythropoietin (EPO)--The Secretary would report to the Committee concerning the methodology and rationale for establishing the payment rate for erythropoietin used to treat ESRD patients. The report would include a summary of information provided by the manufacturer and used by the Secretary to develop the payment rate. The report would include a plan for monitoring the appropriateness of rates in the future. The report would be due on April 1, 1990.

The GAO would review the Secretary's findings and report to the Committees by June 1, 1990. The OTA would report on alternative acquisition and reimbursement strategies to reduce expenditures for certain drugs without sacrifice to quality of care.

Effective Date.--Paragraphs (a),(c) and (d) are effective upon date of enactment. Paragraph (b) is effective on October 1, 1989.

18. MEDICAL EFFECTIVENESS AND OUTCOMES RESEARCH

Present Law.--The Omnibus Budget Reconciliation Act of 1986 (OBRA '86) provided for the establishment of a patient outcome assessment research program, administered by the National Center for Health Services Research and Health Care Technology. This program includes: reorganization of Medicare claims data, assessments of medical care, evaluations of patient outcomes, and other activities. (OBRA '86) authorized to be appropriated from the Medicare Trust Funds $6 million for FY 1987, and $7.5 million for each of FY 1988 and FY 1989. These authorization amounts were increased by the Technical and Miscellaneous Revenue Act of 1988 and the authorization was extended through FY 1991.

Explanation of Provision.--(a) Research Program on Outcomes and Effectiveness Research--The Secretary would establish and fund a program of research on outcomes, effectiveness and appropriateness of medical care. The research program would include: 1) reviews of existing research findings; 2) development of new research methodologies, including a comparison of data-based methods of advancing knowledge, and methodologies that measure clinical and functional status of patients; 3) grants and contracts to research centers and other research entities for research on outcomes, effectiveness and appropriate treatment options for specific conditions, including research on the appropriate use of prescription drugs; 4) projects that demonstrate the use of claims data and data on clinical and functional status for outcomes, effectiveness and appropriateness research; and 5) establishment of a process to assure that new information and medical innovation are addressed, in a timely fashion, and incorporated in the research program when appropriate.

The Subcommittee intends that the Secretary would provide for the involvement of non-physician professionals on the advisory council, and consultation with non-physician professionals on research on outcomes and effectiveness and on development of guidelines related to services provided by such professionals.

(b) Data Base Development--The Secretary would develop: 1) uniform definitions of data to be collected and used in describing patient's clinical and functional status; 2) uniform standards for the security, accuracy and maintenance of data; 3) linkages and common reporting formats for the Department's administrative and clinical data bases; 4) supplements to data bases, including the collection of new information, to enhance data bases for research purposes; and 5) design and develop data bases that would be used in the outcomes and effectiveness research.

The Secretary would submit a report to Congress on the feasibility of establishing data base linkages between administrative and clinical data bases in the Department of Health and Human Services (HHS) and data bases in other Federal departments, including those maintained by the Department of Defense, Veterans Administration, Office of Personnel Management, and between HHS and private sector organizations.

(c) Education and Dissemination of Findings--The Secretary would develop relationships with professional medical societies, associations, and other relevant groups that would be necessary to establish a program for disseminating the findings from the outcomeS and effectiveness research. The Secretary would fund research on effective means to educate providers, consumers and others in using the outcomes, effectiveness, and appropriateness research findings, and would develop a formal program for training physician managers within provider organizations.

(d) Guideline Development--The Secretary would establish an ongoing program of financial support and oversight for the development of condition or procedure specific guidelines based on measurable outcomes and patient experience in forms appropriate for use in educational programs and for reviews of the quality and appropriateness of medical care. The ongoing program for development of practice guidelines should provide for updating the guidelines to reflect changes in technology and appropriate medical practice. By 1991, the Health Care Financing Administration (HCFA) would establish a Medicare demonstration program for evaluation of practice guidelines for at least three conditions--conditions which account for a significant portion of Medicare expenditures, and for which there are significant variations in the frequency and type of interventions. The Secretary would develop an evaluation methodology for the demonstration project, and would provide for an evaluation of the demonstration as a model for broad scale implementation.

(e) Report to Congress--The Secretary would submit an annual report to Congress on the progress of the program, on the program's effects on medical care, including the effects on medical care provided to Medicare beneficiaries. The first report would be due one year after enactment.

(f) Advisory Council--The Secretary will develop a charter for and appoint membership to the 18-member Advisory Council. The Council would assist and advise the Secretary on the program for medical outcomes, effectiveness and appropriateness research. Membership of the Council shall consist of representatives from a broad range of interested parties, such as: professional provider associations and societies; provider education associations; quality of care review entities and associations; health services research associations; health care insurers; employer groups; provider accreditation groups; hospital associations; medical product manufacturers; the Department of Defense; and the Veterans Administration.

(g) Coordinating Group--A three-person Coordinating Group would be established. Membership of the group would include: the Administrator of the Health Care Financing Administration (HCFA); the Assistant Secretary for Planning and Evaluation (ASPE); and the Assistant Secretary for Health (ASH), who would serve as chair. The group would develop and submit to the Secretary an annual Department-wide coordinated research and program plan for each of the following elements: research, data development and information dissemination and guideline development. The Group would set the annual outcomes and effectiveness program agenda and priorities. The Group would determine the conditions for which guidelines would be developed. Two-thirds of the conditions selected for use in the guidelines demonstration project would have to be approved by the HCFA administrator. The list of such conditions would be reported to the Secretary.

(h) Definitions-- 1) Outcomes Research: Research that focuses on the evaluation of a treatment or alternative treatments for a condition, and formally assesses the probabilities for the full spectrum of different outcomes and the value of these outcomes for patients, including mortality, morbidity, functional status, symptoms, and quality of life.

2) Effectiveness Research: Research that focuses on the uses of treatments for patients in typical clinical practice and the impact on outcome of the treatment of those patients, taking into account (to the extent relevant) patient conditions and local environment, and through routine monitoring and feedback of information to physicians and patients, on changes in the treatment to improve outcomes in such practice.

3) Appropriateness Research - Research, which may be based on outcomes research, effectiveness research, and/or a consensus of medical experts or expert judgment, that assesses treatments with respect to the characteristics of particular patients for which the treatments are effective.

(i) Budget--The outcome and effectiveness research program would be authorized for a period of five years, beginning in FY 1990. In FY 1990, two-thirds of the amounts authorized would come from the Medicare Trust Funds, 60% from the Hospital Insurance Trust Fund and 40% from the Supplementary Medical Insurance Trust Fund. The remaining amount would be authorized out of general revenues. The amounts authorized in each of the five years would be $72 million for FY 1990, $110 million for FY 1991, $170 million for FY 1992, $225 million for FY 1993, and $270 million for FY 1994.

Of the amounts authorized for FY 1990, one-third would be allocated for the research component, one-third for the data component, one-sixth to be distributed evenly among the information and educational component, including the evaluation of the information dissemination methodologies, and one-sixth for the guideline development component.

Effective Date.--On enactment.

19. MEDICARE HOSPITAL PATIENT PROTECTION AMENDMENTS

Present Law.--(a) Scope of Hospital Responsibility for Screening--If an individual comes to the emergency department of a hospital with an emergency medical condition or in active labor , the hospital must provide medical screening within the capability of its emergency department. Within the capabilities of the staff and facilities available the hospital must provide medical services necessary to stabilize an individual or, if the benefits of transfer outweigh the risks, transfer the individual to another hospital.

(b) Informed Consent--A hospital is considered to meet the requirements for providing examinations or treatment or appropriate and necessary transfers if a patient (or a person acting on their behalf) refuses the examination or treatment or transfer.

(c) Standard for Authorizing Transfer--In general an unstable patient may not be transferred unless the patient's emergency medical condition has stabilized or the patient is no longer in active labor, or the patient requests that a transfer be effected, or a physician (or other qualified medical personnel when a physician is not readily available) has signed a certification that based upon the reasonable risks and benefits to the patient, and based upon the information available at the time, the medical benefits of transfer outweigh the risks.

(d) Notice and Record-Keeping Requirements--Hospitals transferring patients are required to provide the receiving facility with appropriate medical records of the examination and treatment effected at the transferring hospital.

(e) Medicare Conditions of Participation--As a condition of participation in Medicare, hospitals are required to comply with the requirements of the emergency patient protection provisions, to the extent applicable.

(f) Enforcement--The standard of liability for hospitals and physicians for civil money penalties of up to $50,000 is that the statute is knowingly violated. Physicians are liable with respect to a hospital's violation of the law if the physician is an employee or under contract to the hospital and if the physician had professional responsibility for the care of the individual with respect to whom a violation occurred.

(g) Additional Obligation of Hospitals with Specialized Facilities--There are no special requirements for such hospitals.

(h) Whistleblower Protection--No provision.

Explanation of provision.--(a) Scope of Hospital Responsibility for Screening--The amendment would clarify that a hospital's responsibility for initial treatment of emergency patients relates to the hospital's entire capabilities, not just the capacity of its emergency room. Hospitals could not delay necessary treatment in order to assess a patient's financial capability. The definitions of emergency medical condition, active labor, stabilized condition, and the end of active labor would be clarified.

(b) Informed Consent--In the case of a patient (or a person acting on their behalf) who refused examination, treatment, or an appropriate and necessary transfer, the hospital would be required to explain the risks and benefits to the patient (or the person acting on their behalf) of the examination, treatment, or transfer, and take all reasonable steps to secure the patient's or person's written, informed consent to refuse such examination, treatment, or transfer.

(c) Standard for Authorizing Transfer--Hospitals would be required to take all reasonable steps to obtain written informed consent from patients (or a person acting on their behalf) requesting to be transferred. Such consent should indicate that the patient was informed of the risks and benefits of transfer.

The standard for transfer would be clarified to make clear that the benefits of treatment at another facility must be weighed against the risks of the transfer based upon information available at the time of transfer. In the case of active labor, the risks and benefits to the unborn child would also have to be taken into account. A hospitals would be required to provide whatever treatment was within its capability prior to transfer in order to reduce the risks of transfer. The transferring hospital would be required to outline the risks and benefits of transfer on the records it is required to send with the patient.

The provision regarding physician authorization for transfer would be clarified such that a qualified person other than a physician could authorize a transfer only in direct consultation with a physician, for example via telephone, and the physician when available would be required to countersign the certification.

(d) Notice and Record-Keeping Requirements--Transferring hospitals would be required to send with a transferred patient all medical records (or copies) related to the emergency condition for which the patient presented which were available at the time of transfer, including records of observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests, and the informed written consent or certification of the physician, as appropriate.

(e) Medicare Conditions of Participation--As a condition of participation in Medicare the transferring hospital and the receiving hospital would be required to maintain records of transfers (or copies) for a period of five years and would be required to post a sign (in a form determined by the Secretary) in any emergency department specifying the rights of individuals with respect to examination and treatment for emergency conditions and women in active labor. It would also be a condition of participation to adopt and enforce a policy to maintain compliance with the patient protection provisions of the statute.

(f) Enforcement--The requirement that hospitals or physicians "knowingly" violate the law in order to be subject to civil monetary penalties would be deleted. Physician liability would be clarified such that liability would extend to attending physicians as well as staff physicians. Hospitals would be required to maintain a list of on-call physicians immediately available to provide follow-up care.

Physician liability for violations would be clarified to include cases in which he or she (i) refuses to provide a medically appropriate examination; (ii) falsifies the result of any examination, test, or other procedure in order to misrepresent an individual medical condition; (iii) authorizes a transfer without certification; or, (iv) misrepresents an individual's condition in order to induce them to consent to transfer, as well as any other violation of the statute.

Physician liability would also be clarified such that if an attending physician refused to care for the patient, or failed to appear, and if the emergency physician, taking into account the risks and benefits of transfer and treatment at another hospital, under the circumstances, transferred the patient, the physician would not be liable for a penalty under the statute. However, both the hospital and the attending physician on call at the time would be liable for penalties under the statute, including civil monetary penalties and removal from the Medicare program.

(g) Additional Obligation of Hospitals with Specialized Facilities--Hospitals with specialized facilities such as burn units, shock-trauma units, neonatal intensive care units, or rural regional referral centers, would be required to accept patients needing such services.

(h) Whistleblower Protection--Hospitals would be prohibited from retaliating against, penalizing, or otherwise causing injury to a physician who refuses to transfer an unstable patient or a woman in active labor.

Effective Date.--180 days after enactment.

20. HEALTH MAINTENANCE ORGANIZATIONS

Present Law.--(a) Physician Incentive Payments--OBRA '86 prohibited payments to a physician, directly or indirectly, by a hospital, or by a Health Maintenance Organization or other organization with a risk contract with Medicare or Medicaid, in order to reduce or limit services provided to beneficiaries or enrollees.

(b) Exclusions of Prisoners and Welfare Beneficiaries from Computation of the 50/50 Rule--At least fifty percent of the enrollment in a Health Maintenance Organization or similar organization which contracts with Medicare on a risk basis must consist of other than Medicare and Medicaid beneficiaries.

(c) Disclosure of AAPCC Assumptions and Methodology--The Secretary is required to annually determine, and announce in a manner intended to provide notice to interested parties, a per capita rate of payment for each class of beneficiaries enrolled with an HMO or similar organization on a risk basis. The per capita rate of payment must equal 95 percent of the adjusted average per capita cost (AAPCC) of providing Medicare services in a geographic area on a fee-for-service basis.

(d) Benefit Stabilization Fund--Each HMO must develop an adjusted community rate (ACR), an estimate of what it would charge a private member comparable to a Medicare beneficiary for the scope of services covered under its Medicare contract. If an HMO's ACR is lower than its average projected Medicare payment, the HMO must use the difference to fund supplemental benefits or accept a reduced capitation rate.

Alternatively, the HMO may request that a portion of the difference be deposited in a benefit stabilization fund (within the Part A and Part B Trust Funds.) The fund may be drawn upon in a future year if the difference between the ACR and the Medicare capitation rate is insufficient to continue financing the HMO's package of supplemental benefits. A stabilization fund may not be established for any contract period more than six year after the enactment of the Deficit Reduction Act of 1984, or July 18, 1990.

Explanation of provision.--(a) Physician Incentive Payments--The Secretary would be required to identify physician compensation arrangements which in his judgement may place individual physicians at excessive risk or liability and which may lead to the withholding or limiting of medical necessary services or to inappropriately compromising enrollee access to services. In identifying such arrangements the Secretary would be required to consult with representatives of organizations with risk contracts under section 1876 and similar organizations. The Secretary would be required to publish descriptions of potentially high-risk compensation arrangements in the Federal

Register within twelve months after the date of enactment. The Secretary would be authorized to collect such information as may be necessary to enforce this provision.

The Secretary could not approve a risk contract with an organization under section 1876 unless the organization certified to the Secretary that either the organization did not use any potentially high-risk physician compensation arrangements as identified by the Secretary; or, the organization provided information satisfactory to the Secretary describing in detail the physician compensation arrangements employed by the organization and the mechanisms employed by the organization to limit risk to the individual physician, including such mechanisms as stop-loss protection catastrophic insurance, and quality-assurance programs to allow the Secretary to assess whether such arrangements pose an excessive risk.

These requirements would apply to contracts between the organization and subcontractors, as well.

If the Secretary found that an organization a) employed a high-risk physician compensation arrangement after certifying that it did not; b) substantially changed a high-risk arrangement without submitting the required information to the Secretary; or, c) employed any arrangement which provided a direct and specific individual payment to a physician as an inducement to withhold or limit a specific medically necessary service to an identifiable patient, the organization would be subject to civil monetary penalties of up to $100,000 per each determination by the Secretary and intermediate sanctions, including suspending enrollments and suspending payments.

The Subcommittee is concerned that Peer Review Organizations (PROs) are not receiving needed discharge abstract information from the UB '82 uniform bill related to Medicare beneficiaries enrolled in HMOs and other organizations. In the Subcommittee's view HMOs and other organizations have a responsibility to insure that the PROs receive this information; therefore, the Subcommittee would urge the Secretary to adopt a policy requiring HMOs to assure the submission of such discharge information as a condition of contracting with Medicare.

(b) Exclusions of Prisoners and Welfare Beneficiaries from Computation of the 50/50 Rule--Prisoners in a local or state prison or jail and persons for whom a local or state government purchases health benefits as part of a general welfare assistance program could not be counted as non-Medicare or Medicaid enrollees for purposes of meeting the fifty percent requirement.

(c) Disclosure of AAPCC Assumptions and Methodology--The Secretary would be required to disclose the methodology and assumptions used to determine the national per capita cost (USPCC) and adjusted average per capita costs (AAPCC) by September 7 of each year in conjunction with his announcement of the per capita rates. This provision is intended to provide adequate notice in order to allow for review and comment by affected organizations regarding the assumptions and methodology and the resulting USPCC and AAPCCs.

(d) Benefit Stabilization Fund--The authority to establish a benefit stabilization fund would be made permanent.

Effective Date.--Paragraph (a) is effective on March 1, 1989. Paragraphs (b) and (c) are effective upon enactment.

21. PHYSICIAN OWNERSHIP/REFERRAL

Present Law.--Criminal penalties are provided for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration in order to induce business reimbursed under the Medicare or State health care programs. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to five years. Remuneration includes kickbacks, bribes, rebates, and any other payment made directly or indirectly, overtly or covertly, or in cash or in kind. Prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration also intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid by Medicare or State health care programs.

With respect to home health services, a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, a home health agency may not certify regarding a patient's need for home health services.

The Medicare and Medicaid Patient and Program Protection Act of 1987 provided authority to the Inspector General to exclude a person or entity from participation in the Medicare and State health care programs if it is determined that the party is engaged in a prohibited remuneration scheme. The Act required the promulgation of regulations specifying those payment practices that will not be subject to criminal prosecution -- so-called "safe harbors."

The Medicare Catastrophic Coverage Act of 1988 prohibited a home IV therapy provider from providing services to a Medicare beneficiary based on a referral from a physician who has an ownership interest in, or receives compensation from, the provider. The prohibition also applies to ownership or compensation arrangements involving an immediate family member of the referring physician. The referring physician is defined as the physician who prescribes the home IV drug therapy or establishes the plan of care for such therapy.

Several exceptions to this rule are provided: (i) ownership of publicly-traded stock purchased on terms available to the general public; (ii) sole community rural home IV therapy providers: (iii) compensation reasonably related to items or services actually provided by the physician which does not vary in proportion to the number of referrals made; (iv) physicians whose only relationship with the provider is as an uncompensated officer or director of the provider; and (v) other exceptions established by the Secretary in regulation, for ownership or compensation arrangements which the Secretary determines do not pose a substantial risk of program abuse. Payment is denied for services provided pursuant to a prohibited referral. The home IV provider is also prohibited from billing for such services on an unassigned basis. A physician who knowingly and willfully makes a prohibited referral or a provider who knowingly and willfully accepts such a referral would be subject to civil monetary penalties of up to $15,000 for each such referral and/or exclusion from the Medicare program.

Explanation of provision.--(a) General Provisions Regarding Physician Ownership/Referral--In general a physician would be prohibited from referring a patient for a Medicare-covered service to a provider if the physician (or an immediate family member) had an (i) ownership or investment interest in the provider or (ii) other compensation arrangements with the provider. Providers would be prohibited from submitting any bills or claims for reimbursement for services provided pursuant to a prohibited referral. Ownership or investment interest would be through equity, debt, or other means.

(b) Exceptions--The restrictions on financial relationships between physicians and providers only apply in the case of referrals made by referring physicians. Services which would not be considered to be a referral include: (i) services provided personally by or under the direct personal supervision of the physician or another physician in the same group practice; (ii) services of a physicians assistant, a certified nurse midwife, or a psychologist provided by a practitioner who is employed by the referring physician, the physician's group practice, or another physician in the physician's group practice; or, (iii) services provided by a prepaid plan with a contract under sections 1876 or 1833 or a prepaid demonstration project.

For purposes of this provision a group practice would be defined as: (i) a group of two or more physicians organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association; (ii) in which each physician who is a member of the group provides substantially the full range of services which the physician routinely provides through the joint use of shared office space, facilities, equipment, and personnel; (iii) for which substantially all of the services of the physicians who are members of the group are provided through the group and are billed in the name of the group and amounts received are treated as receipts of the group; (iv) in which the overhead expenses of and income from the practice are distributed in accordance with methods previously determined by members of the group; and, (v) which meets such other standards as the Secretary may impose by regulation. In the case of a faculty practice plan associated with a teaching hospital in which physician members may provide a variety of different speciality services and provide professional services both within and outside the group, as well as performing other tasks such as research, the services provided within the group would be excepted from this provision.

The following types of consultations by certain specialists would not be considered to be referrals by a referring physician for this purpose: (i) a request by a radiologist for diagnostic imaging services; (ii) a request by a physician specializing in the provision of radiation therapy services for such services; and (iii) a request by a pathologist for diagnostic clinical laboratory services.

The prescription of a drug by a physician would constitute a referral, but only if the physician directed the patient to a specific pharmacy, home intravenous drug therapy provider, or other entity dispensing a drug.

Certain types of ownership and investment interests would be exempt from the prohibition on referrals, including ownership of or investment interest in: (i) investment securities in large publicly-held corporations. To qualify for the exception, (A) the securities must be traded on the New York Stock Exchange, the American Exchange, or the NASDQ national market system, (B) the corporation must have had assets in excess of $100 million at the close of the most recent fiscal year, and (C) the physician must have purchased the securities on terms generally available to the public. The exception would apply to ownership of shares, bonds, debentures, notes, and other investment securities; (ii) any rural provider (as defined under section 1886 (d); (iii) a hospital in which a physician has an ownership interest if: (A) the physician had admitting privileges at the hospital, (B) the ownership interest is in the hospital as a whole, and (C) the ownership interest was established prior to March 1, 1989; (iv) a hospital in a medically underserved areas (as defined under the Public Health Service Act) if the ownership interest is in the hospital as a whole; (v) an ambulatory surgery center (ASC); (vi) a free-standing or hospital-based renal dialysis facility. Entities excepted under items (ii) through (vi) would have to meet certain other requirements described under the case-by-case exemption clause discussed below.

An exception would also be provided for in-office ancillary services. The exception would apply if: (i) the services are personally provided by the physician or his or her employee under direct supervision or by a member of the same group practice; (ii) were provided in the same building; and, (iii) were billed by the physician performing or supervising the services, or by the group practice. If the services were provided by a group practice with two or more offices, the referral of a patient from a satellite office of the group to a central office or offices providing specialty services would also be excepted. The Subcommittee intends that services in a building physically connected to the building housing the practice, or in the case of services provided by a mobile unit, immediately adjacent to the building housing the practice, would also be excepted under this provision.

Exceptions would also be provided for certain other compensation arrangements. Rental of office space would be excluded based on several tests: (i) there would have to be a written lease agreement signed by the parties specifying the space to be covered by the lease; (ii) the space would have to be dedicated for the exclusive use of the lessee; (iii) the term of the agreement would have to be for at least one year; (iv) the rent would have to be consistent with fair market value and aggregate payments may not vary directly or indirectly based on the volume or value of any referrals between the parties; (v) the arrangement would have to be pursuant to an agreement that would be considered to be commercially reasonable even if no referrals were made between the parties; and (vi) the arrangement would have to comply with any other requirements the Secretary may establish by regulation to protect against program or patient abuse.

An exception would apply to employment and service arrangements involving referring physicians and hospitals. Physicians could be employed by hospitals or could provide administrative (or other services) under contract to the hospital. Conversely, hospitals could provide administrative or other support services to physicians. To qualify for the exception, the employment or service arrangement would have to: (i) be for identifiable services; (ii) the amount of remuneration provided would have to be consistent with fair market value and could not be determined in a manner that takes into account directly or indirectly the volume or value of any referrals made by the physician; (iii) the arrangement would have to be pursuant to an agreement that would be considered to be commercially reasonable even if no referrals were made to the hospital; and (iv) the arrangement met such other requirements as the Secretary imposed by regulation to protect against program or patient abuse. Compensation arrangements involving physician members of a group practice who are salaried by the group would also be excepted from the general rules on compensation arrangements.

An exception would permit non-hospital providers to employ (or contract with) referring physicians for specific identifiable administrative and medical services in three situations described below. Employment of a referring physician would not otherwise be permitted. Additionally, in each case, the employment arrangement would also be required to comply with requirements (ii) - (iv) of the paragraph above.

The three situations are: (i) a medical director of the provider pursuant to a requirement under Title XVIII of the Social Security Act that the provider have a medical director. This exception would apply to medical directors at facilities such as home health agencies, hospices, and home intravenous therapy providers; (ii) direct patient care services provided to a hospice patient pursuant to a contract with the hospice; and, (iii) non-hospital providers employing referring physicians to provide general administrative services in certain limited situations.

An exception would be made for physician recruitment by a hospital to induce a physician to relocate to an area if the physician is not required to refer patients to the hospital and the remuneration is not conditioned on referrals and meets such other requirements as the Secretary may prescribe.

An exception would be made for isolated transactions, such as a one-time sale of real or personal property. To qualify for an exception, the transaction would be required to comply with requirements (ii) - (iv) of the paragraph describing fair market value and reasonable compensation above.

Any entity with a business arrangement not otherwise excepted under this section would be able to apply to the Secretary for an exemption prior to entering into such an arrangement.

In order to qualify for an exemption the services or items provided by a physician-owned entity would: (i) otherwise be unavailable to patients of the community which the entity would serve; (ii) be more convenient for patients (as defined by the Secretary in regulation based upon a reduction in travel time to the service for 75 percent of the patients of the service by thirty minutes or more, taking such factors as seasonal weather conditions into account); or, (iii) be provided at a substantially lower per unit charge and at a substantially lower cost overall to the Medicare program than any similar service in the area served by the entity.

The Secretary would be directed to base his decision on any such application on the following standards and each of the standards would be required to be met:

1) Investment in the venture must be open to, actively offered to, and offered on terms no different than those offered to, investors other than investors in a position to make or to influence referrals or business to the entity;

2) The terms on which an investment interest is offered to an investor who is in a position to make or to influence referrals of business to the entity is not related to the previous or expected volume of referrals of business from that investor to the entity.

3) The investment must be bona fide (i.e., the investor must bear the full risk of loss that is related to his investment) and must meet the "at risk" rules of the Internal Revenue Code;

4) The capital investment of each referring physician investor must be paid in full by the referring physician at the time of investment. Such capital investment may not be borrowed from the entity or any related entity, directly or indirectly to the entity;

5) The amount of payment in return for the investment interest is directly proportional to the amount of the capital investment of that investor;

6) The return on investment must be reasonable (taking into account both current return and increase in the value of the enterprise) in light of the amount invested, the risk of loss of that investment, and comparable returns from market investments generally available to persons not in a position to make referrals;

7) There is no requirement that the investor make or be in a position to make referrals of business to the entity as a condition for the person to continue as an investor;

8) Investors in the entity may not, explicitly or implicitly, be encouraged to order services or otherwise refer business to the entity, and the entity neither collects nor maintains information on the volume of referrals from investors; and,

9) Ownership interests must be disclosed to, and acknowledged by patients in a form and manner satisfactory to the Secretary. At a minimum, such disclosure must include the availability, cost, and qualifications of the facility in which the referring physician has an ownership interest and similar information on at least two other facilities available in the area.

The above requirements, other than those related to prior availability of services, convenience, or cost, would also apply to entities excepted from the definition of ownership or investment interest, as described above.

The Secretary's decision whether to approve an entity's application for an exception would be committed to agency discretion, and would not be reviewable. Only the Secretary or a party that is being sanctioned under this provision could introduce into evidence any written communication between the Secretary and that party related to its own exemption application. Any other written communication related to any other exemption application could not be introduced into evidence in any administrative or judicial proceeding.

An entity which received an exemption would be required to disclose to the Secretary any circumstance which would cause the arrangements to be out of compliance with any one of the standards which was the subject of the entity's approval. The Secretary would be authorized to specify the form and manner of such disclosure, and could require the periodic submission of reports pertaining to the eligibility of any entity that previously received an approval. The Secretary, based on information received from the entity or from any another source, could revoke an entity's exemption approval if he determines that the entity no longer meets any one of the standards which was the subject of the entity's approval. This decision would be committed to agency discretion and would not be reviewable. The Secretary would be authorized to charge an entity for the reasonable costs of processing an exemption application. Such fees would be dedicated to the office delegated with the responsibility of reviewing exemption waivers.

Hospital cost reporting requirements would apply to joint ventures involving hospitals and such reports would be based on uniform hospital reports developed by the Secretary under the uniform hospital reporting demonstration program.

An exception would also be provided for entities which were substantially in operation prior to March 1, 1989. Substantially in operation is defined as an entity which was: a) actually providing services; b) had signed binding contracts for buildings or equipment needed to operate; or c) had received a certificate of need from a state authority designated to provide such certificates under state law. Prohibited compensation arrangements are not eligible for an exemption under this section.

Such entities would be required to provide information regarding the ownership arrangements employed by the entity to the Secretary, including services provided, the names and all of the Medicare provider numbers of the referring physician investors, and any other information required by the Secretary to determine that the entity was not in violation of current law. The Secretary could require periodic reports from such entities in order to assess their continuing compliance with the law. Physician investors referring to a facility in which they had an ownership interest would be required to disclose their ownership to patients in a form and manner determined by the Secretary. The entity could not add any new physician investors (or immediate family members of new physicians) or it would lose its exemption under this section. Entities exempted under a case-by-case exemption provided by the Secretary and excepted entities other than excepted HMOs and publicly-traded corporations would also be required to report this information to the Secretary.

The Subcommittee intends that any prohibition, exemption, or exception authorized under this provision in no way alters (or reflects on) the scope and application of the anti-kickback provisions in section 1128B of the Social Security Act. The Subcommittee does not intend that this provision should be construed as affecting, or in any way interfering, with the efforts of the Inspector General to enforce current law, such as cases described in the recent Fraud Alert issued by the Inspector General. In particular, entities which would be eligible for a specific exception or an exception due to having been substantially in operation prior to March 1, 1989 would be subject to all of the provisions of current law, including home IV therapy providers which are subject to the provisions added by the Medicare Catastrophic Coverage Act of 1988 as of January 1, 1990.

(c) Denial of Payments and Civil Monetary Penalties-- Medicare payment would be denied for any item or service provided pursuant to a prohibited referral. A person who receives any payment from a Medicare beneficiary (including any coinsurance or deductible payments or any payment for an unassigned claim) for a service provided pursuant to a prohibited referral would be required to make a prompt refund to the beneficiary. Any physician who makes a referral that the physician knows or should have known is prohibited would be subject to civil money penalties and exclusion from the Medicare program if a claim or bill is submitted pursuant to such a referral. The provider submitting the bill or claim would be subject to the same penalties if the provider knew or should have known that the bill or claim was for a service provided pursuant to a prohibited referral. The civil money penalty would be up to $15,000 for each item or service provided pursuant to a prohibited referral plus an amount equal to twice the amount billed for the item or service. Circumvention schemes would be prohibited subject to civil money penalties of up to $100,000 and exclusion from the Medicare program.

Any person who knows or should know that a disclosure of any circumstances is required to be made to the Secretary regarding compliance with a circumstance or standard pursuant to which an exemption was granted by the Secretary and who fails to disclose, or causes the failure of such disclosure, is subject to civil monetary penalties of up to $10,000 per day for which disclosure is required to have been made, and to the extent such circumstances when known to the Secretary results in his revocation of his approval of an exemption, such revocation is retroactive to the date disclosure was required to have been made, with payment not allowed from the effective date of revocation.

A "compensation arrangement" is any arrangement involving any remuneration between a physician (or immediate family member) and a provider. The term "remuneration" would include any remuneration, directly or indirectly, overtly or covertly, in cash or in kind. The term "fair market value" means the value in arms length transactions, consistent with general market value without taking into account any additional value that might accrue as a result of the potential for referrals.

The Secretary would be required to publish final regulations within 180 days after enactment.

Effective Date.--Effective for referrals made on or after 180 days after the date of enactment, except that the effective date would be two years after the date of enactment in the case of compensation arrangements that were entered into and became legally binding before March 1, 1989.

22. PART A AND B MISCELLANEOUS AND TECHNICAL PROVISIONS

Present Law.--(a) Coverage for Members of Religious Orders--The Internal Revenue Code enables religious orders to contribute social security payments on behalf of any members of the order, if the member (a) has taken a "vow of poverty," (b) performs tasks usually required of an active member of an order, and (c) is not considered retired because of old age or total disability. Such members of religious orders are considered to be "deemed employees."

Medicare is a secondary payer for aged individuals who have health insurance coverage from an employer. Religious orders are treated as employers under the secondary payer provision. Religious orders are therefore required to provide the same health insurance coverage for their members who are age 65 and older as they do for members under age 65. If a member of an order age 65 or older opts to have Medicare as their primary payer, the order cannot pay for the Medicare co-insurance and deductibles.

(b) Long-term Care Study--No provision.

(c) Medicare Buy-in for Social Security Disability Beneficiaries--Social Security Disability Insurance (SSDI) beneficiaries who return to work stop receiving cash benefits after a 12 month trial work and transition period and stop receiving Medicare benefits after an additional 36 months of extended period of eligibility is exhausted.

(d) Hospital-based Nursing Schools--The Technical and Miscellaneous Revenue Act of 1988 required the Secretary to establish one joint undergraduate nursing education program and to include reasonable costs of education under the program as allowable costs under Medicare. These costs would include salaries, supervision, and classroom costs. The TAMRA provision was not to be construed as affecting generally the proper treatment of such expenses.

(e) Standards for Long Term Care Insurance--No provision.

(f) GAO study of Administrative Costs of Medicare Program--No provision.

(g) Extension of Authority to Contract With Fiscal Intermediaries and Contractors On Other Than A Cost Basis--The Secretary contracts with fiscal intermediaries and carriers to pay claims for benefits under Part A and Part B, respectively, of Medicare. Under authority included in the Deficit Reduction Act of 1984, the Secretary is authorized to terminate up to two fiscal intermediary and two carrier contracts per year for cause and to replace those contractors with contracts in which reimbursement is on other than a cost basis.

(h) PRO Review of Non-Physician Services--Peer Review Organizations (PRO) are entities composed of a substantial number of doctors of medicine and osteopathy who are representative of the practicing physicians in the area. These organizations review the quality and appropriateness of care provided to Medicare beneficiaries.

(i) PRO Quality Denials--Peer Review Organizations review the quality and appropriateness of care provided to Medicare beneficiaries. In reviewing care PROs may identify care that is either inappropriate or of substandard quality. After making such a finding, the PRO issues a preliminary notice to the provider or physician that care was inappropriate or of substandard quality. The PRO may issue a formal notification after the provider or practitioner has been provided an opportunity for discussion and review of the preliminary notification. The formal notification is also then sent to fiscal intermediaries, carriers and the patient, and payment for the service is denied. The patient and provider have 60 days to request reconsideration of the formal denial. If reconsideration is requested, the PRO must complete such reconsideration within 30 working days.

Explanation of provision--(a) Coverage for Members of Religious Orders--Religious orders whose members take a "vow of poverty" and who opt to contribute to Social Security would not be treated as employers for purposes of the secondary payer provision.

(b) Long-term Care Study--HHS would contract with the National Academy of Sciences' Institute of Medicine (IOM) to conduct a study to examine experiences of existing public and private long-term care programs and demonstration projects. The study would identify areas of knowledge that could be used to develop and provide long term care benefits for Medicare beneficiaries. The study would also address the extent to which Medicare coverage of new benefits would meet the needs of Medicare beneficiaries, from the perspective of beneficiaries and providers.

The programs and demonstrations to be reviewed by the IOM would include continuing care retirement communities, Medicaid waiver programs, Older Americans Act programs, Medicare demonstrations programs and other innovative public or privately financed long term care programs.

The IOM study would examine financing, coverage, and administrative issues related to long term care programs. The study would address the adequacy of personnel available to provide services, and outline the methods by which public and private long term care programs: 1) recruit, train and retain personnel; 2) use functional status and disability measures to entitle beneficiaries to various levels of coverage, and 3) take into account the presence of family support and other informal caregivers.

The IOM would examine how new long term care benefits for Medicare beneficiaries could be designed to compliment programs already in place. The study would also identify areas where information important to successful implementation of a long term care benefit program under Medicare is either incomplete or unavailable.

The IOM study should make recommendations and report to the Congress no later than 24 months after the IOM signs a contract with HHS. The Secretary would be required to enter into appropriate arrangements to conduct the study no later than sixty days after enactment.

(c) Social Security Disability Insurance (SSDI) beneficiaries would be allowed to purchase Medicare coverage after they have worked a full 48 months and have exhausted their extended period of Medicare eligibility.

(d) Hospital-based Nursing Schools--The costs incurred by a hospital in training students of a hospital-based nursing school would be considered allowable costs if, prior to June 15, 1989, the hospital incurred substantial costs in training students and operating the school, the nursing school and the hospital share some common board members, and all instruction is provided at the hospital or in the immediate proximity of the hospital. The provision of TAMRA relating to hospital-based nursing schools would be made effective for cost reporting periods beginning in FY 86.

(e) Long Term Care Insurance--The GAO would be directed to review standards that may be used by states to regulate private long term care insurance with respect to inflation protection and non-forfeiture benefits and report to the Committee April 1, 1990.

The Subcommittee intends that: 1) standards for inflation protection and non-forfeiture benefits are important considerations for consumer protection; 2) the National Association of Insurance Commissioners (NAIC) should act to address these considerations; 3) NAIC action with regard to these considerations would be preferable to Federal legislation; and, 4) these issues should be addressed by state regulators.

(f) GAO study of Administrative Costs of Medicare Program--The General Accounting Office would be directed to conduct a review of the administrative burden of Medicare regulations and program requirements on physicians, home health agencies, nursing homes, HMOs, hospitals, fiscal intermediaries, and carriers. The review would include an assessment of current administrative costs and trends in such costs since 1982. For purposes of the study administrative costs include, but are not limited to, costs to providers of non-compliance due to inadequate notification by Medicare, personnel costs and time, cost of data systems and the impact on such systems of changes in program requirements, and training costs. The report would be due to the Congress March 31, 1990.

(g) Extension of Authority to Contract With Fiscal Intermediaries and Contractors On Other Than A Cost basis if the contractor and the Secretary reached mutual agreement to do so. The Secretary could not condition contract renewal on a contractor so agreeing.

(h) PRO Review of Non-Physician Services--PROs would be required to have established procedures for involving non-physician professionals in the review of any services provided within their professions.

(i) PRO Quality Denials--In the case of quality denials, PROs would be required to provide the physician or provider a reconsideration of the formal notification before notice is sent to patients, carriers or fiscal intermediaries. Such reconsiderations would not affect the right of a beneficiary to such reconsideration after receiving the formal notification. If a provider or practitioner is provided such reconsideration, it would be in lieu of any other reconsideration that would otherwise be made.

Effective Date.--Paragraph (a) January 1, 1990, paragraphs (b), (e), (f), (g), and (h) effective upon enactment. Paragraph (c) effective October 1, 1989. Paragraph (d) effective for cost reporting periods beginning on or after October 1, 1989. Paragraph (i) effective January 1, 1990.

IV. BENEFICIARY PREMIUMS

23. PART B PREMIUM

Present Law.--Part B is a voluntary program financed by premiums paid by aged, disabled and chronic renal disease enrollees and by general revenues of the Federal government. The premium rate is derived annually based partly upon the projected costs of the program for the coming year. Under prior law, the premium rate was changed on July 1 of each year. The Social Security Amendments of 1983 moved the premium increase to January 1 of each year to coincide with the changed date for the annual Social Security cash benefit cost-of-living adjustment (COLA).

Ordinarily, the premium rate is the lower of (1) an amount sufficient to cover one-half of the costs of the program for the aged or (2) the current premium amount increased by the percentage by which cash benefits were increased under the COLA provisions of the Social Security program.

Low-income beneficiaries are protected from the full effect of premium increases by two provisions. First, premium increases are constrained to prevent social security benefits, from which the premiums are deducted, from declining in absolute amount. Second, the Medicare Catastrophic Coverage Act provided for Medicaid payment of premiums for individuals below the poverty line.

From 1984 through 1989, the premium was set at 25 percent of program costs for beneficiaries. The remaining 75 percent was covered by general revenues. In 1990, under current law, the premium increases would be calculated as they were prior to 1984.

In CY 1989, the basic Part B premium is $27.90. Beneficiaries are also liable for the catastrophic flat monthly premium which is $4.00 in 1989.

Explanation of provision.--The basic Part B premium would be set at 25 percent of program costs for CY 1990.

Effective Date.--January 1, 1990

V. OTHER HEALTH PROVISIONS

24. EXTENSION OF COBRA COVERAGE FOR SSDI DISABILITY

Present Law.--Under title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), employers with 20 or more employees are required to provide certain employees and their families the option of purchasing continued health insurance coverage in the case of certain events. These events include: termination or reduction in hours of employment, death, divorce or legal separation, eligibility for Medicare, or the end of a child's dependency under a parent's health insurance policy. The maximum period of continuation coverage that may be elected is 36 months except in the case of termination of employment or reduction of hours for which the maximum period is 18 months. COBRA allows the employer to charge the employee 102 percent of the premium cost for the continued health insurance.

Explanation of provision.--Individuals who obtain health insurance coverage under the COBRA provisions and are disabled under Title II of the Social Security Act would be eligible to extend the continuation period from 18 months to 29 months. The premium for the eleven additional months would be set at 150 percent of the average cost of coverage for the employer rather than the 102 percent rate set for the initial eighteen months.

Effective Date.--Date of enactment

MISCELLANEOUS RECONCILIATION ISSUES

1. Tax Treatment of Overseas Private Investment Corporation (OPIC)

Present Law

The Foreign Assistance Act of 1961 established the Overseas Private Investment Corporation (OPIC) as an agency of the United States under the foreign policy guidance of the Secretary of State. The purpose of OPIC is to facilitate the participation of United States private capital and skills in the economic development of less developed countries by conducting insurance, reinsurance, guarantee, and financing operations on a self-sustaining basis for OPIC-approved overseas investment projects of U.S. citizens.

The Foreign Assistance Act of 1961, as amended, specifically provides that OPIC is exempt from all Federal, State, and local taxes (22 U.S.C. sec. 2199(J)).

The International Cooperation Act of 1989, H.R. 2655 (favorably reported by the House Committee on Foreign Affairs on June 16, 1989, H. Rept. 101-90), would amend and recodify the Foreign Assistance Act of 1961, including the provisions governing OPIC, but would not specifically provide tax-exempt status for OPIC. After the recodification, OPIC would have tax-exempt status only if it is exempt from Federal income taxes under the Internal Revenue Code of 1986 without regard to any provision of law not contained in that Code and which is not contained in a revenue Act (sec. 501(c)(1)).

Description of Foreign Affairs Committee Proposal

The Internal Revenue Code would be amended to specifically provide that OPIC be exempt from all Federal taxes. This would codify the existing tax exemption in the Internal Revenue Code.

2. Exclusions for Certain Overseas Allowances Received by Defense Department Personnel

Present Law

State Department and Central Intelligence Agency (CIA) civilian officers and employees are exempt from tax on certain allowances and other items related to their overseas assignments (Code sec. 912(1)(A) and (B)). Benefits may include loans of household effects, health care, payment of certain work-related entertainment and representational expenses, and the payment of certain travel and related expenses of employees and their families, including expenses for travel and moving to and from assigned posts of duty, and travel for home leave, medical care, family visits, and the evacuation of families from dangerous foreign areas (22 U.S.C. secs. 4081-4086; 50 U.S.C. sec. 403e).

Beginning with Intelligence Authorization Acts for fiscal years 1982 and 1984 (Pub. Laws No. 97-89 and 98-215), the law has provided that comparable benefits could be given to civilian Defense Department employees assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices outside the United States (10 U.S.C. sec. 1605) and to certain designated civilian and military Defense Department employees (generally National Security Agency personnel) assigned to special cryptologic activities outside the United States (section 9(b) of the National Security Agency Act of 1959, as amended (50 U.S.C. sec. 402 note)). The Code does not provide tax exemptions for these Defense Department employee benefits.

Administration Proposal

The Administration has transmitted for the consideration of the Congress a proposed "Intelligence Authorization Act for Fiscal Years 1990 and 1991." A section of the proposed bill would provide a tax exemption for those allowances and other items, comparable to the allowances and other items provided to civilian State Department and CIA employees, which are provided (under 10 U.S.C. sec. 1605 or sec. 9(b) of the National Security Agency Act of 1959, as amended) to civilian employees and officers of the Defense Department assigned to Defense Attache Offices and Defense Intelligence Agency Liaison Offices outside the United States, or to special cryptologic activities outside the United States, in cases where such allowances or other items would be exempt under current law if received by civilian State Department or CIA employees.

Select Committee on Intelligence Proposal (H.R. 1291)

Same as Administration proposal.

Effective Date

The proposal as set forth by the Administration and in H.R. 1291 has no express effective date. The proposal could be made effective for taxable years beginning after December 31, 1988.

3. Nonrecognition of Capital Gains for Divestments of Property Subject to Federal Ethics Requirements

Present Law

Generally gain or loss is recognized on any sale, exchange or other disposition of property. The Internal Revenue Code contains provisions under which taxpayers may elect not to recognize gain realized on the involuntary conversion of certain property if property similar or related in service or use to the property converted is acquired by the taxpayer within the replacement period (sec. 1033). In such a situation, gain is recognized only to the extent that the amount realized exceeds the cost of the replacement property. The basis of the replacement property will generally be the same as that of the converted property; however, proper adjustments must be made for (i) any money received and not spent to acquire replacement property, and (ii) any gain or loss not recognized.

Description of Administration Proposal[2]

The Administration's ethics proposal would require that employees and officers of the executive, congressional and judiciary branches of the U.S. government, as well as Members of Congress, be required to divest assets which may pose a conflict of interest. The proposal provides that if the proceeds of the sale of capital assets are reinvested in any capital asset within 60 days the sale will be treated as an involuntary conversion subject to nonrecognition of gain as under present law. Nonrecognition would be available only to those assets which the employee is specifically required to divest by the office designated with authority to determine conflicts of interest.

Effective Date

The proposal would apply to transfers after the date of enactment.

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[2] As contained in the President's ethics proposal submitted to the Congress.

4. Petroleum Tax for Oil Spill Liability Trust Fund

Present Law

Present law (Internal Revenue Code sec. 4611) establishes an excise tax at the rate of 1.3 cents per barrel on domestic crude oil and imported petroleum products (including imported crude oil) for the purpose of funding the Oil Spill Liability Trust Fund. However, the tax will not be imposed until the enactment of qualified authorizing legislation.[3] Although the tax itself was enacted in 1986, qualified authorizing legislation has never been enacted. Consequently, this tax has never been collected.

The tax on domestic crude oil would be imposed on the operator of any United States refinery receiving such crude oil, while the tax on imported petroleum products would be imposed on the person entering the product into the United States for consumption, use, or warehousing. If domestic crude oil were used in, or exported from, the United States before imposition of the petroleum tax, the tax would be imposed on the user or exporter of the oil.

Repayable advances could be made to the Trust Fund from the general fund in a maximum outstanding amount of $500 million. The maximum amount which could be paid from the Trust Fund for any single incident is $500 million, no more than $250 million of which could be used to pay for natural resource damage claims (sec. 9509(c)).

The Oil Spill Liability Trust Fund excise tax is scheduled to expire on December 31, 1991. The tax will terminate earlier than that date if the Secretary of the Treasury determines that $300 million has been credited to the Oil Spill Liability Trust Fund before January 1, 1992.

Administration Proposal

The Administration bill (H.R. 2325) amends the present-law Oil Spill Liability Trust Fund excise tax by imposing the tax commencing on the first day of the first month beginning more than 30 days after the date of enactment. The bill also extends the expiration date of the tax from December 31, 1991, to June 30, 1994. As under present law, the tax will terminate earlier than that date if the Secretary of the Treasury determines that the amount of taxes credited equals $300 million.

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[3] The Code requires that the authorizing legislation must be substantially identical to subtitle E of title VI, or subtitle D of title VIII, of H.R. 5300 of the 99th Congress as passed the House of Representatives.

The bill modifies the limitations on expenditures from the Trust Fund to permit the President to waive the present-law expenditure limit of $500 million per incident. The bill also would remove the present-law expenditure limit of $250 million on payments for natural resource damages.

Proposal of the Committee on Merchant Marine and Fisheries[4]

The proposal of the Committee on Merchant Marine and Fisheries would modify present law to impose a tax rate of 2.0 cents per barrel whenever the Trust Fund balance is less than $250 million or whenever a repayable advance is outstanding. The proposal would increase the ceiling on collections from $300 million to $500 million. The tax would be automatically reinstated at the rate of 1.3 cents per barrel whenever the Trust Fund balance falls below $500 million.

In addition, the proposal would increase the per-incident expenditure limit from $500 million to $1 billion. The proposal also would authorize borrowings of up to $1 billion to meet the purposes of the Trust Fund.

Other Possible Option

Another option would be to modify present law to impose the tax without the required authorizing legislation and to extend collection of the tax through December 31, 1992. Collection of the tax would commence on October 1, 1989.

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[4] As communicated to Chairman Rostenkowski in a letter dated June 5, 1989, from Chairman Jones of the Committee on Merchant Marine and Fisheries and Chairman Tauzin of the Subcommittee on Coast Guard and Navigation. Full Committee mark-up of H.R. 1465, as reported by the Subcommittee on Coast Guard and Navigation, is scheduled for June 21, 1989.

SUBCOMMITTEE ON SELECT REVENUE MEASURES

TARGETED JOBS TAX CREDIT

I. SUMMARY AND LEGISLATIVE BACKGROUND

A. Summary

Present law

Under present law, the targeted jobs tax credit is available on an elective basis to employers for hiring individuals from nine targeted groups. Certification of targeted group membership is required as a condition of claiming the credit.

The credit generally is equal to 40 percent of the first $6,000 of qualified first-year wages paid to a member of a targeted group, for a maximum credit of $2400. With respect to economically disadvantaged summer youth employees, however, the credit is equal to 40 percent of up to $3,000 of wages, for a maximum credit of $1,200. The employer's deduction for wages must be reduced by the amount of the credit claimed.

The credit is available with respect to targeted-group individuals who begin work for the employer before January 1, 1990.

Present law also authorizes appropriations for administrative and publicity expenses relating to the credit through September 30, 1989. These monies are to be used by the Internal Revenue Service (IRS) and Department of Labor to inform employers of the credit program.

Subcommittee recommendations

The Subcommittee, on June 13, 1989, ordered favorably reported the extension of the targeted jobs tax credit for three years, with a modification.

The modification requires that employers specifically identify the categories (but not to exceed two) for which the individual is believed to be eligible when requesting certification. In addition, the employer must include a statement on the certification request that a good faith effort was made to determine that the individual may be eligible for the credit.

B. Legislative Background

The Subcommittee on Select Revenue Measures of the Committee on Ways and Means held a public hearing on the targeted jobs tax credit on June 6, 1989.[1]

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[1] See Joint Committee on Taxation pamphlet, Present Law and Issues Relating to the Targeted Jobs Tax Credit (H.R. 452, H.R. 815, and H.R. 2098) (JCS-13-89), May 24, 1989.

II. EXPLANATION OF SUBCOMMITTEE RECOMMENDATIONS

Present Law

Tax credit provisions

Under present law, the targeted jobs tax credit is available on an elective basis for hiring individuals from nine targeted groups. The targeted groups are: (1) vocational rehabilitation referrals; (2) economically disadvantaged youths aged 18 through 22; (3) economically disadvantaged Vietnam-era veterans; (4) Supplemental Security Income (SSI) recipients; (5) general assistance recipients; (6) economically disadvantaged cooperative education students aged 16 through 19; (7) economically disadvantaged former convicts; (8) Aid to Families with Dependent Children (AFDC) recipients and Work Incentive (WIN) registrants; and (9) economically disadvantaged summer youth employees aged 16 or 17. Certification of targeted group membership is required as a condition of claiming the credit.

The credit generally is equal to 40 percent of the first $6,000 of qualified first-year wages paid to a member of a targeted group. Thus, the maximum credit generally is $2,400 per individual. With respect to economically disadvantaged summer youth employees, however, the credit is equal to 40 percent of up to $3,000 of wages, for a maximum credit of $1,200. Also, the employer's deduction for wages must be reduced by the amount of the credit claimed.

The credit is not available for wages paid to a targeted group member unless the individual either (1) is employed by the employer for at least 90 days (14 days in the case of economically disadvantaged summer youth employees), or (2) has completed at least 120 hours of work performed for the employer (20 hours in the case of economically disadvantaged summer youth employees).

The credit is available with respect to targeted-group individuals who begin work for the employer before January 1, 1990.

Authorization of appropriations

Present law also authorizes appropriations for administrative and publicity expenses relating to the targeted jobs tax credit through September 30, 1989. These monies are to be used by the Internal Revenue Service (IRS) and Department of Labor to inform employers of the credit program.

Reasons for Change

The Subcommittee believes that the targeted jobs tax credit provides a useful incentive for hiring disadvantaged individuals, but, given changes in the labor market and the use of the targeted jobs credit that may occur over time, an opportunity for further assessment by the Congress and the Treasury Department is appropriate. In addition, the Subcommittee believes that certain minor changes will improve the administration of the program.

Explanation of Provisions

Extension and modification of the credit

The Subcommittee recommendation extends the targeted jobs tax credit for three additional years with one modification. Under the recommendation, the credit is available for wages paid to targeted-group individuals who begin work for an employer after December 31, 1989, and before January 1, 1993.

The modification requires that employers specifically identify the categories (but not to exceed two) for which the individual is believed to be eligible when requesting certification of individual eligibility for individuals who have not received from the designated local agency a preliminary determination of eligibility. In addition, the employer must include a statement on the certification request that a good faith effort was made to determine that the individual may be eligible for the credit.

Authorization of appropriations

The Subcommittee recommendation also extends the authorization for administration and publicity expenses to fiscal years 1990 through 1992. To the extent feasible, the IRS and the Department of Labor should inform employers (e.g., through press releases or announcements) of the extension of the credit.

Effective Date

The Subcommittee recommendation applies to targeted-group individuals who begin work for the employer after December 31, 1989, and before January 1, 1993. Under the provision, the credit does not apply with respect to individuals who begin work for the employer after December 31, 1992.

REHABILITATION TAX CREDITS UNDER THE PASSIVE LOSS RULE

I. SUMMARY AND LEGISLATIVE BACKGROUND

A. Summary

Present Law

Under present law, a rehabilitation tax credit is provided for expenditures incurred in rehabilitation of certified historic structures and certain nonresidential buildings placed in service before 1936. A 20 percent credit is provided in the case of certified historic structures, and a 10 percent credit is provided in the case of qualified rehabilitated buildings (other than certified historic structures) that are nonresidential and that were originally placed in service before 1936.

Under the passive loss rules, credits from passive activities generally are limited to the tax attributable to the passive activities. The passive loss rules apply to individuals, estates, trusts, and personal service corporations. A special rule limits the use of passive activity losses and credits against portfolio income in the case of closely held corporations.

A special rule is provided for passive activity losses and credits attributable to rental real estate activities, allowing up to $25,000 of losses (to the extent they exceed income from passive activities) from rental real estate activities in which the taxpayer actively participates. The $25,000 allowance also applies to low-income and rehabilitation credits (on a deduction equivalent basis), regardless of whether the taxpayer claiming the credit actively participates in the rental real estate activity generating the credit. In addition, the adjusted gross income phaseout range for the $25,000 deduction equivalent amount for these credits is from $200,000 to $250,000 (rather than the phaseout range of $100,000 to $150,000 that is generally applicable under the $25,000 allowance).

Subcommittee recommendations

The Subcommittee, on June 13, 1989, ordered favorably reported a recommendation on treatment of the rehabilitation tax credit under the passive loss rules.

The Subcommittee recommendation modifies the present-law application of the passive loss restrictions to the rehabilitation tax credit by removing the adjusted gross income limitations on the $25,000 deduction equivalent allowance of the credit with respect to rental real estate activities. The recommendation is effective for taxable years ending after December 31, 1989, for property placed in service after that date. In addition, if the property is held through a partnership or other pass-through entity, the taxpayer's interest in the partnership or other pass-through entity must have been acquired after December 31, 1989.

B. Legislative Background

The Subcommittee on Select Revenue Measures of the Committee on Ways and Means held a public hearing on the rehabilitation tax credit on June 6, 1989.[1]

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[1] See Joint Committee on Taxation pamphlet, Present Law and Issues Relating to the Low-Income Housing and Rehabilitation Tax Credits (JCS-12-89), May 12, 1989.

II. EXPLANATION OF SUBCOMMITTEE RECOMMENDATIONS

Present Law

Rehabilitation tax credit in general

A credit is provided for expenditures incurred in rehabilitation of certified historic structures and certain nonresidential buildings placed in service before 1936. The amount of the credit is determined by multiplying the applicable rehabilitation percentage by the basis of the property that is attributable to qualified rehabilitation expenditures. The applicable rehabilitation percentage is 20 percent for certified historic structures and 10 percent for qualified rehabilitated buildings (other than certified historic structures) that are nonresidential and that were originally placed in service before 1936.

A building is eligible for the 20-percent credit only if it is substantially rehabilitated, and is listed in the National Register or is certified by the Secretary of the Interior as being of historical significance to the registered historic district in which it is located. A building is eligible for the 10-percent credit only if it is substantially rehabilitated and meets a structural requirement relating to the percentage of its external and internal walls that are retained.

The basis of any property eligible for the rehabilitation credit is reduced by the full amount of the allowable credit. No cost recovery allowance or depreciation deduction is allowed for rehabilitation expenditures that are considered funded by the rehabilitation credit.

In addition, the rehabilitation credit is subject to recapture if the rehabilitated building is disposed of or otherwise ceases to be qualified investment property at any time during the five year period beginning after the year the property is placed in service.

Restrictions on use of credit to offset tax

The rehabilitation credit is subject to the rules of the general business credit, including the maximum amount of income tax liability that may be reduced by a general business credit in any one year. This limitation generally is equal to the excess (if any) of the taxpayer's net income tax over the greater of (1) the taxpayer's tentative minimum tax for the year, or (2) 25 percent of so much of the taxpayer's net regular tax liability as exceeds $25,000. Thus, the credits may not offset the taxpayer's alternative minimum tax.

Unused credits generally may be carried back 3 taxable years and then forward 15 years (to the extent permitted by other applicable limitations, if any).

Passive loss restrictions on credit use

In general

Under the passive loss rules, deductions from passive trade or business activities or rental activities generally may not be deducted against other income, to the extent such deductions exceed income from all such passive activities (exclusive of portfolio income). Similarly, credits from passive activities generally are limited to the tax attributable to the passive activities. Suspended losses and credits are carried forward and treated as deductions and credits from passive activities in the next year. Suspended losses from an activity are allowed in full when the taxpayer disposes of his entire interest in the activity. The rule applies to individuals, estates, trusts, and personal service corporations. A special rule limits the use of passive activity losses and credits against portfolio income in the case of closely held corporations.

Special rules

$25,000 allowance in the case of rental real estate activities.--A special rule is provided for passive activity losses and credits attributable to rental real estate activities. In the case of rental real estate activities, an individual may deduct up to $25,000 of passive activity losses (to the extent they exceed income from passive activities) if the taxpayer actively participates in the rental real estate activity (and has at least a 10 percent interest in it). The $25,000 amount is phased out ratably as the taxpayer's adjusted gross income, with certain modifications, increases from $100,000 to $150,000.

$25,000 allowance for low-income housing and rehabilitation credits.--Under a special rule, the $25,000 allowance also applies to low-income housing and rehabilitation credits (on a deduction equivalent basis), regardless of whether the taxpayer claiming the credit actively participates in the rental real estate activity generating the credit. In addition, the adjusted gross income phaseout range from the $25,000 amount for these credits is from $200,000 to $250,000 (rather than the generally applicable phaseout range of $100,000 to $150,000).

Reasons for Change

The Subcommittee believes that preservation and rehabilitation of existing historic buildings and nonresidential buildings first placed in service before 1936 should be encouraged. The Federal Government can foster this goal through several means, and at this time, the

Subcommittee believes that providing tax incentives to private investors to engage in rehabilitation activities is the most appropriate way to achieve this aim.

In this regard, the Subcommittee is concerned that present law excludes some individuals from the pool of likely investors in rehabilitation property. The Subcommittee recommendation modifies the otherwise applicable restrictions on availability of the rehabilitation credit to upper-income individuals, with the aim of expanding the investment in these types of projects, while retaining all other applicable limitations.

Explanation of Provision

The Subcommittee recommendation modifies the application of the passive loss restrictions to the rehabilitation tax credit by removing the adjusted gross income limitations on the $25,000 deduction equivalent allowance of the credits with respect to rental real estate activities. Thus, up to a $25,000 deduction equivalent amount of rehabilitation credit is available to an individual under the Subcommittee recommendation, regardless of his adjusted gross income.[2] The Subcommittee recommendation otherwise retains present law with respect to the rehabilitation credit.

Effective Date

The Subcommittee recommendation is effective in taxable years ending after December 31, 1989, for property placed in service after December 31, 1989. In addition, if the property is held through a partnership or other passthrough entity, the taxpayer's interest in the partnership or other passthrough entity must have been acquired after December 31, 1989.

Revenue Effect

The Subcommittee recommendation is estimated to reduce fiscal year budget receipts by $8 million in 1990, $21 million in 1991, $29 million in 1992, $39 million in 1993, and $48 million in 1994.

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[2] The Subcommittee also ordered reported certain low-income housing credit provisions, including a provision removing the adjusted gross income limits on the deduction equivalent amount of low-income housing credits with respect to rental real estate activities. Thus, under the two Subcommittee recommendations, the $25,000 (deduction equivalent) allowance of present law is retained but no adjusted gross income limits apply under the $25,000 rule for either low-income housing credits or rehabilitation credits.

SIMPLIFICATION OF THE CORPORATE ALTERNATIVE MINIMUM TAX

I. SUMMARY AND LEGISLATIVE BACKGROUND

A. Summary

Present law

Under present law, corporations are subject to an alternative minimum tax which is payable, in addition to all other tax liabilities, to the extent it exceeds the corporation's regular tax. The tax is imposed at a flat rate of 20 percent on alternative minimum taxable income in excess of a phased-out $40,000 exemption amount. Alternative minimum taxable income generally is the corporation's taxable income, as increased or decreased by certain adjustments or preferences. The foreign tax credit is allowed against the minimum tax.

Adjustments and preferences are provided for accelerated depreciation, mining exploration and development costs, certain long-term contracts, pollution control facilities, certain installment sales, Merchant Marine Capital Construction Funds, special insurance deductions, percentage depletion, excess intangible drilling costs over 65 percent of oil and gas income, certain bad debt reserves of financial institutions, tax-exempt interest on certain newly issued private activity bonds, and charitable deductions of appreciated property.

In addition, for years beginning before 1990, one-half of the excess of pre-tax book income of a corporation over other alternative minimum taxable income is a minimum tax adjustment. For taxable years beginning after 1989, three-fourths of the excess of adjusted current earnings over other alternative minimum taxable income is an adjustment. Adjusted current earnings is generally determined by using the corporation's earnings and profits as computed for tax purposes.

Subcommittee recommendations

The Subcommittee on June 13, 1989, agreed to recommend changes to the corporate alternative minimum tax.

The Subcommittee recommendation repeals adjusted current earnings as a separate adjustment and instead generally use the components of the adjusted current earnings adjustment as components of the corporate minimum tax base beginning in 1990. Thus, corporations will be required to make only one set of computations in calculating minimum taxable income. The Subcommittee recommendation contains several provisions simplifying the application of the minimum tax to corporations.

B. Legislative Background

On April 11,1989, Chairman Rostenkowski introduced H.R. 1761, a bill to simplify the corporate alternative minimum tax. The Subcommittee on Select Revenue Measures of the Committee on Ways and Means held a public hearing on H.R. 1761 on June 8, 1989.[1]

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[1] See Joint Committee on Taxation Pamphlet, Description of H.R. 1761, Relating to Simplification of the Corporate Minimum Tax (JCS-14-89), May 25, 1989.

II. EXPLANATION OF SUBCOMMITTEE RECOMMENDATIONS

Present Law

In general

Under present law, corporations are subject to an alternative minimum tax which is payable, in addition to all other tax liabilities, to the extent that it exceeds the corporation's regular income tax owed. The tax is imposed at a flat rate of 20 percent on alternative minimum taxable income in excess of the exemption amount. Alternative minimum taxable income is the corporation's taxable income increased by the corporation's tax preferences and adjusted by determining the tax treatment of certain items in a manner which negates the deferral of income resulting from the regular tax treatment of those items. The exemption amount is $40,000, reduced (but not below zero) by 25 percent of the amount by which alternative minimum taxable income exceeds $150,000. The foreign tax credit (computed based on items of alternative minimum taxable income), and to a limited extent the regular investment tax credit, may be used to offset the alternative minimum tax.

Where a corporation pays the alternative minimum tax, the amount of the tax paid (to the extent attributable to adjustments relating to timing differences with the regular tax) is allowed as a credit against the regular tax in future years. This credit (known as the minimum tax credit) cannot be used to reduce tax below the tentative minimum tax in subsequent years.

Also, net operating losses, foreign tax credits, and investment tax credits cannot be used to offset, in the aggregate, more than 90 percent of the pre-foreign tax credit tentative minimum tax which would otherwise be determined.

Adjustments and preferences

The adjustments which are made to taxable income to arrive at alternative minimum taxable income are as follows:

(1) Depreciation on real property to which the new ACRS system adopted in 1986 applies is calculated using straight line depreciation with a 40-year life.

(2) Depreciation on personal property to which the new ACRS system adopted in 1986 applies is calculated using the 150-percent declining balance method (switching to straight line in the year necessary to maximize the deduction) using the applicable ADR midpoint life.

(3) Mining exploration and development costs paid or incurred after 1986 are recovered through 10-year straight

line amortization.

(4) In the case of any long-term contract entered into by the corporation on or after March 1, 1986, use of the completed contract method of accounting is not permitted and the corporation is required to apply the percentage of completion method. This rule does not apply to certain small home construction contracts.

(5) In the case of any certified pollution control facility placed in service after 1986, the alternative depreciation system (section 168(g)) is required to be used.

(6) In the case of dispositions of property described in section 1221(1) (relating to dealer property) after March 1, 1986, use of installment reporting is not permitted. This rule does not apply to the sale of timeshares and residential lots to which special installment sale rules apply.

(7) In the case of a personal holding company, circulation expenditures paid or incurred after 1986 are amortized ratably over a three-year period.

(8) Amounts deposited after 1986 in a capital construction fund established under section 607 of the Merchant Marine Act of 1936 are not deductible and earnings on such income are not excludable.

(9) The special deduction (sec. 833) for certain tax-exempt insurance providers is not allowed.

(10) The deduction for percentage depletion is limited to the adjusted basis of the property.

(11) The amount of intangible drilling costs that are expensed in excess of the amount that would have been allowable if the costs had been capitalized and amortized ratably over a 10-year period and in excess of 65 percent of the amount of net oil and gas income is not allowed in computing alternative minimum taxable income.

(12) Bad debt deductions of financial institutions in excess of the amount that would have been allowable had the taxpayer maintained its bad debt reserve for all taxable years on the basis of actual experience are not allowed in computing alternative minimum taxable income.

(13) Interest on tax-exempt private activity bonds (other than qualified 501(c)(3) bonds) issued after August 8, 1986 (September 1, 1986, in the case of certain bonds) is included in alternative minimum taxable income.

(14) The amount of the deduction for charitable contributions of appreciated property is limited to the

adjusted basis of the property.

(15) Certain depreciation on pre-1987 property (generally accelerated depreciation on real property) is a tax preference to the extent it was a preference under the prior law "add-on" corporate minimum tax which was repealed in 1986.

(16) The special rules relating to the treatment of certain farm losses which apply to individuals under the alternative minimum tax also apply to personal service corporations, and the special rules relating to the treatment of certain passive losses which apply to individuals under the alternative minimum tax also apply to personal service corporations and closely held corporations.

Book income

In addition to the above adjustments in computing alternative minimum taxable income, for taxable years beginning before 1990, alternative minimum taxable income is increased by one-half of the amount by which the corporation's pre-tax book income exceeds the corporation's alternative minimum taxable income (determined without regard to this adjustment and without regard to net operating losses). Book income generally is the amount that the corporation discloses on its financial statement prepared for creditors, shareholders, regulatory purposes, and so forth.

Adjusted current earnings

For taxable years beginning after 1989, the adjustment for book income no longer applies and, instead, alternative minimum taxable income is increased by an amount equal to 75 percent of the amount by which adjusted current earnings (ACE) exceed alternative minimum taxable income (before this adjustment). In general, adjusted current earnings means alternative minimum taxable income as computed above with additional adjustments. These adjustments generally follow the rules presently applicable to corporations in computing their earnings and profits.

These adjustments are described below:

(1) Depreciation is computed for adjusted current earnings using the slower of the method used for book purposes or the applicable earnings and profits method. The earnings and profits method is straight line depreciation using ADR midpoint lives (40 years in the case of real property). The determination of whether the book method or the earnings and profits method is slower is calculated by comparing net present values of the deductions for each method, with taxpayers allowed to elect to use the slowest cumulative depreciation.

For property placed in service in taxable years beginning before 1990, special rules apply. For property placed in service to which the ACRS system adopted in 1986 applies, the applicable earnings and profits method uses (a) the adjusted tax basis used in computing alternative minimum taxable income as of the close of the last taxable year beginning before 1990, (b) the remaining ADR midpoint life at the beginning of the first taxable year beginning after 1989, and (c) the straight line method. For property to which the original ACRS system adopted in 1981 applies, the applicable earnings and profits method is the same as the method for property to which the new ACRS system applies except that the adjusted basis used in computing the regular tax is used. For property to which ACRS does not apply, the applicable earnings and profits method is the method used in computing taxable income.

(2) Amounts, such as interest on all tax-exempt bonds, which are excluded in computing alternative minimum taxable income but which are taken into account in computing earnings and profits are included in computing adjusted current earnings, and any deduction attributable to such income is allowed as a deduction.

(3) The inside buildup on a life insurance contract or on an annuity policy is includible in adjusted current earnings, and a deduction is allowed for that portion of any premium that is attributable to insurance coverage. This rule does not apply to qualified annuities held under a plan described in section 403(a) or an annuity contract which is a qualified funding asset.

(4) A deduction is not allowed for any item if such item would not be deductible in any taxable year for purposes of computing earnings and profits. Thus, for example, the dividends-received deduction is not allowed. However, the 100-percent dividends-received deduction is allowed if the payer and payee corporation could not file a consolidated return (by reason of section 1504(b)) to the extent the payer is subject to Federal income tax.[2]

Certain withholding and income taxes paid with respect to dividends paid by section 936 corporations are creditable as foreign taxes.

(5) Construction period interest, property taxes, and

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[2] Adjusted current earnings does not include dividends received from a corporation with which the payee files a consolidated tax return where the dividend is eliminated under the consolidated return regulations (Treas. Reg. sec. 1.1502-14(a)).

carrying charges paid or incurred in taxable years beginning after 1989 must be capitalized in the manner prescribed for purposes of computing earnings and profits.

(6) Intangible drilling costs deductible under section 263(c) in taxable years beginning after 1989 are capitalized and amortized using the slower of the method used in computing book income or the 60-month period beginning with the month in which production from the well begins.

(7) Mining exploration and development costs deductible under section 616(a) or 617 in taxable years beginning after 1989 are capitalized and amortized using the slower of the method used in computing book income or the 120-month period beginning with the later of the month in which production from the deposit begins or the month in which the amount was paid or incurred.

(8) The special rules relating to the deduction for circulation expenditures (under section 173) and the amortization of organization expenditures (under section 248) do not apply to amounts paid or incurred in taxable years beginning after 1989.

(9) Adjusted current earnings is adjusted for any increase or decrease in the LIFO recapture amounts (i.e., the amount by which inventory under the first-in, first-out method exceeds inventory under the last-in, first-out method) for taxable years beginning after 1989.

(10) Installment sale reporting is denied for sales made in taxable years beginning after 1989.

(11) The percentage of completion method of accounting must be used in lieu of the completed contract method for contracts entered into on or after March 1, 1986.

(12) No loss is allowed on the exchange of any pool of debt obligations for another pool of debt obligations having substantially the same effective interest rates and maturities.

(13) Life insurance companies must treat their acquisition expenses of any policy in accordance with the method used under generally accepted accounting principles (GAAP).

(14) The allowance for depletion for any property placed in service in a taxable year beginning after 1989 shall be whichever of the methods (cost depletion or the method of depletion used for book purposes) which yields deductions with the smallest present value.

(15) In the case of a corporation with a net built-in

loss that has experienced a change of ownership after October 22, 1986, the basis of each property of the corporation is its proportionate share of the value of the stock of the corporation.

Reasons for Change

The corporate minimum tax as enacted in the Tax Reform Act of 1986 was intended to serve one overriding objective: to ensure that no corporation with substantial economic income can avoid significant tax liability by using exclusions, deductions, and credits. The tax reform bill which passed the House responded to this concern by adopting a corporate minimum tax treating certain enumerated items as tax preferences. The Senate amendment then generally followed the House bill and in addition made one-half of the excess of book income over other alternative minimum taxable income a minimum tax adjustment. In the conference agreement, the Senate position was accepted for 1987, 1988 and 1989. However, the book preference was replaced by the adjusted current earnings preference described above for years beginning after 1989. The adjusted current earnings preference, based on the tax concept of earnings and profits, was instituted as a separate list of adjustments, not integrated with the basic minimum tax adjustments and preferences. Three-fourths of the adjusted current earnings in excess of other minimum taxable income was included as a preference. As a result of the 1986 legislation, the computation of the corporate minimum tax beginning in 1990 will be extremely complicated.

The Subcommittee recommendation is intended to simplify the computation of the corporate minimum tax in several important ways. First, one minimum tax treatment of each deduction and exclusion is provided, rather than the multiple treatment prescribed under present law. This will reduce significantly the computations required to be made by a corporation in computing its tax liability. Second, the computations required to determine if a corporation's book treatment of certain items, such as depreciation and depletion, is relevant to the determination of minimum tax are eliminated. The elimination of all references to the corporation's book treatment of an item will mean that corporations will not have to make a present value computation to determine whether the book method or ACE tax method produces a less beneficial tax result. Finally, changes are made to conform minimum tax treatment to regular tax treatment.

Explanation of Provision

The Subcommittee recommendation simplifies the corporate minimum tax for taxable years beginning after 1989 by repealing the adjusted current earnings (ACE) preference as a separate preference and by integrating its component items into the regular minimum tax as separate preferences. Thus, those ACE preferences integrated into the regular minimum tax will become full preferences rather than 75-percent preferences, as under present law.

Under the Subcommittee recommendation, generally, depreciation is computed by using the alternative depreciation system for tangible property placed in service in taxable years beginning after December 31, 1989. This method of depreciation applies to individuals as well as corporations. In addition, for corporations, in the case of (1) property placed in service to which the old ACRS system applies and (2) property placed in service in taxable years beginning before 1990 to which the new ACRS system applies and which is presently allowed accelerated depreciation under the minimum tax (sec. 56(a)(1)), a declining balance method of 120 percent (switching to straight line at the beginning of the year resulting in the highest allowance) will apply for taxable years beginning after December 31, 1989. The recovery period will be the remainder of the recovery period applicable to the property under the alternative depreciation system. The tax basis presently prescribed under ACE depreciation will be used. Depreciation shown on the taxpayer's books will not be taken into account in determining alternative minimum taxable income.

In the case of intangible drilling costs, the earnings and profits method (i.e., 60-month amortization for productive wells) applies, without regard to the book method used by the taxpayer.[3] The allowance for depletion is determined under the cost depletion method without regard to the method used for book purposes.[4]

The remaining items of the adjusted current earnings preference are treated as separate minimum tax preferences. Thus, for example, tax-exempt interest is fully included in the minimum taxable income of corporations and the dividends-received deduction is not allowed (except in certain parent-subsidiary situations for which a deduction is presently provided under ACE).

The Subccommittee recommendation provides that the Treasury Department is to set forth guidance on those items, such as interest on tax-exempt bonds (sec. 103), certain interest on ESOP loans (sec. 133), and the proceeds of life insurance contracts (sec. 101), which are included in alternative minimum taxable income by reason of section 56(c)(1), relating to the inclusion of certain items excluded from gross income but taken into account for purposes of computing earnings and profits. Likewise guidance is to be issued on those items, such as the dividends-received deduction (secs. 243 and 245), which are not deductible in computing earnings and profits for any taxable year.[5] This guidance may set forth rules as to both those items to which section 56(c)(1) and (2) apply and those items which are not taken into account under the provisions. The initial guidance is to be issued by March 15, 1991 (the unextended due date for calendar year 1990, the first year to which these provisions apply). Additional guidance may be issued subsequently but it is expected that it would not be retroactive to years for which returns are already due. It is emphasized that the alternative minimum taxable income is not the same as earnings and profits, but rather that many items are treated in the same manner for purposes of computing the minimum tax as their treatment for earnings and profits purposes.[6]

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[3] The earnings and profits method is changed to provide that amortization will begin in the month the costs are paid or incurred. Taxpayers (corporate and individual) may elect this method of amortization for regular tax purposes.

[4] The present-law minimum tax preferences for these items (secs. 57(a)(1) and (2)) will not apply to corporations.

Among the items treated under the provision as a separate adjustment are acquisition expenses of life insurance companies. As under the present-law adjusted current earnings preference, such acquisition expenses are to be capitalized and amortized in accordance with the treatment generally required under generally accepted accounting principles, as if this rule applied to all taxable years. The Subcommittee wishes to clarify that although acquisition expenses are to be amortized in accordance with the treatment generally required under generally accepted accounting principles, the amount of such expenses is properly determined in accordance with tax accounting principles so as to accurately measure income. The Subcommittee recommends that the Treasury Department provide guidance to ensure that acquisition expenses are amortized in a manner consistent with accurate measurement of income.

The provision also provides that the exclusion for the discharge of indebtedness under section 108 applies for minimum tax purposes. Under the provision, bankrupt and insolvent corporations will be required to reduce minimum tax attributes such as net operating losses where debts are discharged and the section 108 exclusion applies.

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[5] Under section 56(c)(2), as redesignated by the Subcommittee recommendation, no deduction is allowed with respect to a dividend paid. See H. Rept. 99-841, Conference Report to Accompany H. R. 3838, p. II-276.

[6] Thus, for example, items deductible in computing earnings and profits but not deductible in computing taxable income generally are not deductible in computing the minimum tax.

Further, the provision makes the following additional minor changes:

(1) The corporate preference for circulation expenses is conformed to the individual preference (i.e., 3-year amortization).[7]

(2) Gain on installment sales with respect to which interest is paid at the tax underpayment rate is allowed minimum tax installment sale treatment since appropriate interest is being paid for the right to defer payment of the tax.

(3) The capitalization principles of section 263A will apply rather than the earnings and profits rules of section 312(n)(1).

(4) The provision relating to certain changes of ownership will apply only to changes occurring in taxable years beginning after December 31, 1989.

(5) The special treatment of annuities is deleted as unnecessary by reason of the exceptions added by the Technical and Miscellaneous Revenue Act of 1988.

(6) Several nonsubstantive drafting simplifications are included in the provision.[8]

Effective Date

The Subcommittee recommendation applies to taxable years beginning after December 31, 1989.

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[7] This change is included to make the provision easier to administer than the present law ACE provision relating to circulation expenditures.

[8] Several references to the treatment of losses (mining, circulation expense, and research and experimental losses) are deleted from the Code, and a general reference to losses is added. This is not intended to change existing law.

LOW INCOME RENTAL HOUSING TAX CREDIT

I. SUMMARY AND LEGISLATIVE BACKGROUND

Summary

Present law

Present law provides a credit to owners of residential rental property used for low-income housing. The amount of the credit is determined as a percentage of the qualified basis of the housing units serving the low-income tenants. For buildings placed in service after 1987, the maximum credit for new construction and substantial rehabilitation expenditures which are not federally-subsidized is 70 percent present value of the qualified basis. The maximum credit for the cost of acquisition of an existing building and for federally-subsidized new construction and substantial rehabilitation expenditures is 30 percent present value of the qualified basis.

The credit generally is allowed in equal annual amounts during the first 10 years after the qualified property is placed in service. Unless the qualified property continuously complies with requirements for low-income tenants and other credit requirements for a period of 15 years after it is placed in service, the accelerated portion of the credit may be recaptured.

For purposes of the low-income housing credit, low-income tenants are defined as those tenants having incomes equal to or less than either 50 percent or 60 percent of area median income, adjusted for family size. The qualifying income (i.e., 50 or 60 percent) for a particular property depends on the minimum percentage of housing units that the owner elects to provide for low-income tenants.

Each State is assigned an annual credit volume limit of $1.25 per resident. The owner of eligible property is required to receive a credit allocation from the appropriate State or local government authority in order for the credit to be allowable, unless the property is substantially financed with the proceeds of tax-exempt bonds subject to the State's bond volume limitation.

The low-income housing credit is scheduled to expire December 31, 1989.

Subcommittee recommendations

The Subcommittee on June 13, 1989 ordered favorably reported the extension of the low-income housing credit for three years with modifications. The principal modifications that would be made under the Subcommittee recommendation include: a three-year extension of the credit; a carryover of unused State credit authority to the next year; an extension of the credit payment period to 15 years, while generally retaining the credit's present values as under existing law; the substitution of a penalty for noncompliance equal to one year's credit; the elimination of the credit available for acquisitions of existing buildings absent substantial rehabilitation; a change in the definition of substantial rehabilitation from $2,000 per low-income unit to the greater of $3,000 per low-income unit or 25 percent of unadjusted basis; the elimination of the gross income limit to the special low-income housing credit passive loss rule; and the permission of up to a maximum 91-percent present value credit for certain "difficult development" areas. The Subcommittee recommendation would also make certain changes to section 42 designed to improve the efficacy and administration of the credit.

Legislative Background

The Subcommittee on Select Revenue Measures of the Committee on Ways and Means held a public hearing on the low-income housing credit on May 23, 1989.[1]

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[1] See Joint Committee on Taxation pamphlet, Present Law and Issues Relating to the Low-Income Housing and Rehabilitation Tax Credits (JCS-12-89), May 12, 1989.

II. EXPLANATION OF THE SUBCOMMITTEE RECOMMENDATIONS

Present Law

Overview of credit

Section 42 of the Code provides a tax credit that may be claimed by owners of residential rental property used for low-income housing. The credit is claimed annually, generally for a period of 10 years beginning either with the year a building is placed in service or the succeeding taxable year (the credit period).[2]

Determination of credit amount

For buildings placed in service in 1987, the costs of new construction and substantial rehabilitation that are not federally subsidized are eligible for a maximum 9-percent credit, claimed annually for 10 years. For buildings placed in service in 1987, the acquisition cost of existing buildings and the costs of new construction and substantial rehabilitation which are federally subsidized are eligible for a maximum 4-percent credit, also claimed annually for 10 years. For buildings placed in service after 1987, these credit percentages are adjusted to maintain a present value of 70 percent and 30 percent for the two types of credits, and are determined monthly for property placed in service in each month. A building is placed in service for purposes of section 42 when the first unit in the building is suitable for occupancy under State and local law (see Internal Revenue Service Notice 88-116, 1988-44 I.R.B. 22). A taxpayer's credit amount in any taxable year is the product of the appropriate credit percentage and the appropriate qualified basis amount in such year.

Credit percentage

For buildings placed in service after 1987, the credit percentage is determined monthly, to achieve a present value of either 70 percent (most newly constructed and substantially rehabilitated buildings) or 30 percent (existing buildings and all federally-subsidized buildings) of the qualified basis. The present value is calculated as of the last day of the first year of the 10-year period for which the credit is allowed. The discount rate used to determine the present value is 72 percent of the average of the annual applicable Federal rates (AFR) for mid-term and long-term obligations applicable for the month the building is placed in service.

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[2] Section 42 was enacted by the Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (Oct. 22, 1986) (the 1986 Act), and modified by the Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-847, 102 Stat. 3342 (Nov. 10, 1988) (the 1988 Act). Unless expressly stated to the contrary, no inference should be drawn from any differences in the description of present law with respect to section 42 from those set forth in the Conference Reports for the 1986 and 1988 Acts. Reference should be made to those Reports for a more detailed description of present law with respect to section 42.

The Treasury Department's monthly adjustments of the credit percentages are to be determined on a discounted after-tax basis, based on the average of the annual applicable Federal rates (AFR) for mid-term and long-term obligations for the month the building is placed in service. The after-tax interest rate is to be computed as the product of (1) the average AFR and (2) 72 (one minus the maximum individual Federal income tax rate). The discounting formula assumes each credit is received on the last day of each year and that the present value is computed as of the last day of the first year.

For buildings placed in service after 1987, however, the taxpayer (with the consent of the housing credit agency) may irrevocably elect to determine the credit percentage applicable to the building in advance of the building's placed-in-service date. Such an election will be binding for Federal income tax purposes on the taxpayer, the housing credit agency, and all successors in interest. The election must be made at the time a binding agreement is made between the taxpayer and the housing credit agency as to the housing credit dollar amount to be allocated to the building. In the case of a building financed with the proceeds of tax-exempt bonds for which no allocation from a housing credit agency is required, the election must be made by the taxpayer in the month in which the tax-exempt bonds are issued. The election must be filed with the Treasury Department by the fifth day of the month following the date the binding agreement is made or the bonds are issued.

The credit percentage for substantial rehabilitation expenditures is determined when the rehabilitation is completed and placed in service, but no later than the end of the 24-month period for which such expenditures are aggregated. These rehabilitation expenditures are treated as a separate new building for purposes of the credit.

Qualified basis

In general.--The qualified basis with respect to which the credit is computed is determined as the percentage of eligible basis in a qualified low-income building attributable to the low-income rental housing units. This percentage is the lesser of (1) the percentage of low-income units to all residential rental units or (2) the percentage of the floor space of the low-income units to the floor space of all residential rental units. In these calculations, low-income units generally are those housing units actually occupied by low-income tenants, whereas residential rental units are all housing units, whether or not occupied.

With respect to the new construction credit, the eligible basis of a building is determined at its placed-in-service date. With respect to the acquisition and substantial rehabilitation credits, the eligible basis of a building is determined at the end of the first taxable year of the credit period. This determination is made before the basis of the building is adjusted to take into account depreciation deductions allowable for such first taxable year.

Additions to qualified basis.--The qualified basis of a building may be increased subsequent to the initial determination only by reason of an increase in the number of low-income units or in the floor space of the low-income units (in contrast to increases in the eligible basis of the building). Credits claimed on such additional qualified basis are determined using a credit percentage equal to two-thirds of the applicable credit percentage allowable for the initial qualified basis. As described below under the description of the State credit ceiling, an allocation of credit authority must be received for credits claimed on additions to qualified basis, in the same manner as for credits claimed on the initial qualified basis. Unlike credits claimed on the initial qualified basis, credits claimed on additions to qualified basis are allowable annually on a straight-line basis for the portion of the required 15-year compliance period remaining after eligibility for such credits arises, regardless of the year such additional qualified basis is determined.

Eligible basis

In general.--Eligible basis consists of (1) the cost of new construction, (2) the cost of substantial rehabilitation, and (3) the cost of acquisition of existing buildings acquired by purchase (including the cost of rehabilitation, if any, to such buildings incurred before the close of the first taxable year of the credit period and which does not exceed $2,000 per low-income unit). Qualified basis is determined in the same fractional manner as for new construction or acquisition costs even if all rehabilitation expenditures are made only to low-income units. Only the adjusted basis of depreciable property may be included in eligible basis.

Generally, the eligible basis of a building is determined at the time the building is placed in service. For this purpose, rehabilitation expenditures (in excess of $2,000 per low-income unit) are treated as placed in service at the close of the period when rehabilitation expenditures are incurred. Such period is not to exceed 24 months. In the case of rehabilitation expenditures incurred in connection with the acquisition of an existing building (and which do not exceed the $2,000 per low-income unit threshold amount), capital expenditures incurred through the end of the first year of the credit period may be included in the original eligible basis. Rehabilitation expenditures need not, however, be incurred by the taxpayer claiming the credit; under certain circumstances, they may have been incurred by the seller of the building. Cf. Treas. Reg. sec. 1.167(k)-1(b)(1).

Only the adjusted basis of the building and certain common facilities (e.g., parking areas and recreational facilities) may be included in eligible basis. The adjusted basis is determined by taking into account the adjustments described in section 1016 (other than paragraphs (2) and (3) of sec. 1016(a), relating to depreciation deductions), including, for example, the basis adjustment provided in section 48(g) for any rehabilitation credits allowed under section 38. The cost of land is not included in adjusted basis. The basis of units whose cost per square foot is disproportionate to that of the low-income housing units by more than 15 percent of the average cost per square foot of the low-income units is excluded from eligible basis.

Acquisition of existing buildings.--The cost of acquisition of an existing building may be included in eligible basis and any rehabilitation expenditures to such a building incurred before the close of the first year of the credit period may at the election of the taxpayer also be included in eligible basis, without a minimum rehabilitation requirement. These costs may be included in eligible basis, however, only if the building or a substantial improvement to the building has not been previously placed in service within 10 years and if the building (or rehabilitated property within the building) is not subject to the 15-year housing credit compliance period.

A building that is transferred in a transaction where the basis of the property in the hands of the new owner is determined in whole or part by the adjusted basis of the previous owner (for example, by a gift of property or like-kind exchange) is considered not to have been newly placed in service for purposes of the 10-year placed-in-service requirement. Further, a building which has been acquired by a governmental unit, or certain qualified 501(c)(3) or 501(c)(4) organizations is not treated as placed in service by that governmental unit or organization for purposes of the 10-year placed-in-service requirement, if the acquisition occurred more than 10 years from the date the building or a substantial improvement to the building was last placed in service. Further, a building acquired by foreclosure by taxpayers other than a governmental unit or 501(c)(3) organization is not treated as newly placed in service by that taxpayer for purposes of the 10-year requirement if the foreclosure occurred more than 10 years from the date the building or a substantial improvement to the building was last placed in service and the property was resold within twelve months.

The Treasury Department may waive the 10-year requirement for any building substantially assisted, financed, or operated under the Department of Housing and Urban Development (HUD) section 8, section 221(d)(3), or section 236 programs, or under the Farmers' Home Administration (FmHA) section 515 program (a federally-assisted building) when an assignment of the mortgage secured by property in the project to HUD or FmHA otherwise would occur or when a claim against a Federal mortgage insurance fund would occur.

Federal grants and other subsidies.--Eligible basis may not include the amount of any Federal grant, regardless of whether such grant is includible in gross income. If any portion of the eligible basis attributable to new construction or to substantial rehabilitation expenditures is financed with Federal subsidies (*e.g.*, tax-exempt bonds), the qualified basis is eligible only for the 30-percent present value credit, unless such Federal subsidies are excluded from eligible basis.

A Federal subsidy is defined as any obligation the interest on which is exempt from tax under section 103 or a direct or indirect Federal loan, if the interest rate on such loan is less than the applicable Federal rate. A Federal loan under the FmHA section 515 program is an example of such a Federal subsidy, as is a reduced interest rate loan attributable in part to a Federal grant. Tax-exempt financing or a below-market loan used to provide construction financing for a building will not be treated as a Federal subsidy if such loan is repaid and any underlying obligation (*e.g.*, tax-exempt bond) is redeemed before the building is placed in service.

Minimum set-aside requirement for low-income individuals

Set aside percentage requirements

In general.--Under the general minimum set-aside a residential rental project qualifies for the low-income housing tax credit only if (1) 20 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 50 percent or less of area median income (equivalent to the figure published by HUD under section 8 of the Housing Act of 1937 for very low-income families) or (2) 40 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 60 percent or less of area median income.[3] These income levels are adjusted for family size. All units comprising the minimum set-aside in a project must be suitable for occupancy and used on a nontransient basis, and are subject to the limitation on gross rent charged to residents of set-aside units.

Rent skewing set-aside.--A special set-aside may be elected for projects that satisfy a stricter requirement and that significantly restrict the rents on the low-income units relative to the other residential units in the building (the "rent skewing" set-aside). Projects qualify for this rule only if, as part of the general set-aside requirement, 15 percent or more of all low-income units are occupied by individuals having incomes of 40 percent (rather than 50 percent or 60 percent) or less of area median income, and the average rent charged to tenants in the residential rental units which are not low-income units is at least 300 percent of the average rent charged to low-income tenants for comparable units. Under this special rule, a low-income tenant who initially meets the 40-percent test will continue to qualify in the future as such, as long as the tenant's income does not exceed 170 percent (rather than the general 140 percent limit, described below) of the qualifying income limitation. Additionally, if a project to which this special set-aside requirement applies ceases to comply with the continuous compliance requirement because of increases in existing tenants' incomes, no penalties are imposed if each available low-income unit (rather than each available unit) is rented to tenants having incomes of 40 percent or less of area median income, until the project is again in compliance.

The owner of each project must irrevocably elect the minimum set-aside requirement (including the rent skewing set-aside described above) at the time the project is placed in service. In the case of a project consisting of a single building, the set-aside requirement must be met within 12 months of the date the building (or rehabilitated property) is placed in service, and complied with continuously thereafter for a period ending 15 years after the first day of the first taxable year in which the credit is claimed.

In the case of a multiple building project, buildings need not meet the minimum low-income set-aside requirement in the order that the buildings are placed in service. If within 12 months of the placed-in-service date of a prior building the project meets the set-aside requirement with respect to such first building and any subsequent buildings placed in service within the 12-month period, then such first building and included subsequent buildings are part of a qualified low-income project. Subsequent buildings not included in determining whether the project satisfies the set-aside requirement with respect to prior buildings have their own 12-month period within which they are required to be included in the set-aside determination for the project. Since application of this rule may result in buildings which are part of the same project having different credit periods, section 42(g)(5) permits the taxpayer to redefine the mix of buildings considered a part of the project for purposes of determining continued compliance with the set-aside requirement.

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[3] A special set-aside requirement under which a project qualifies if 25 percent or more of the units are occupied by individuals with incomes of 60 percent or less of area median income is provided for New York City.

Continuous compliance required

The determination of whether a tenant qualifies as low income for purposes of the minimum set-aside requirement is made on a continuing basis, both with regard to the tenant's income and the qualifying area income, rather than only on the date the tenant initially occupies the unit. An increase in a tenant's income relative to qualifying area income may result, therefore, in a unit ceasing to qualify as occupied by a low-income person. However, a qualified low-income tenant is treated as continuing to be such notwithstanding *de minimis* increases in his income. Under this rule, a tenant qualifying when initially occupying a rental unit will be treated as continuing to have such an income provided his income does not increase to a level more than 40 percent in excess of the maximum qualifying income, adjusted for family size. If the tenant's income increases to a level more than 40 percent above the otherwise applicable ceiling (or if the tenant's family size decreases so that a lower family income applies to the tenant) that tenant is no longer counted in determining whether the project satisfies the set-aside requirement. No penalty is assessed in such an event, however, provided that each residential rental unit that becomes vacant (of comparable or smaller size to the units occupied by tenants who no longer satisfy the applicable income requirement) is rented to low-income tenants until the project is again in compliance.

Vacant units, formerly occupied by low-income individuals, may continue to be treated as occupied by qualified low-income individuals for purposes of the set-aside requirement (as well as for determining qualified basis) provided reasonable attempts are made to rent the units and no other units of comparable or smaller size in the project are rented to nonqualifying individuals. In no case is a unit considered to be occupied by low-income individuals if all of the occupants of such unit are students, no one of whom is entitled to file a joint income tax return.

Gross rent limitation

The gross rent paid by families in units on which a tax credit is claimed may not exceed 30 percent of the applicable area income qualifying as "low," adjusted for family size. Gross rent includes the cost of any utilities, other than telephone. If any utilities are paid directly by the tenant, the maximum rent that may be paid by the tenant is reduced by a utility allowance prescribed by the Treasury Department.

The gross rent limitation applies only to payments made directly by the tenant. For example, any rental assistance payments made on behalf of the tenant, such as through section 8 of the United States Housing Act of 1937 or any comparable Federal, State or local rental assistance, are not included in gross rent for purposes of the 30-percent limit. (Such payments are, however, included in determining gross rent for purposes of the special exception for rent-skewed projects.) The Subcommittee wishes to clarify that, notwithstanding any statements in previous legislative history of section 42 which might be interpreted to the contrary, it is in agreement with the treatment of the provision of services other than housing contained in Internal Revenue Service Notice 89-6, 1989-2 I.R.B.

Qualified low-income housing projects and qualified low-income buildings

A qualified low-income building is a building which is subject to the 15-year compliance period and which is part of a qualified low-income project. A qualified low-income project is a project that meets the minimum set-aside requirement and other requirements with respect to the set-aside units at all times that buildings comprising the project are subject to the 15-year compliance period. A project may include multiple buildings having similarly constructed housing units, provided the buildings are located on the same tract of land, are owned by the same person for Federal income tax purposes, and are financed pursuant to a common plan of financing. Owner-occupied buildings with four or fewer units are ineligible for the credit.

Compliance period and penalty for noncompliance

Qualified residential rental projects must remain as rental property and must satisfy the minimum set-aside requirement, described above, throughout a 15-year compliance period. Units on which credits are claimed, in addition to those meeting the minimum set-aside requirement on which a credit is allowable must continuously comply with this requirement. The taxpayer may defer the beginning of the credit period to the taxable year following the date the building is placed in service. This enables the deferral of the beginning of the 15-year compliance period. Within 90 days of the end of the first taxable year of the credit period, the taxpayer must make certain certifications to the Secretary of the Treasury regarding set-aside compliance and other matters.

Owners and operators of low-income housing projects on which a credit has been claimed may correct any noncompliance with the set-aside requirement within a reasonable period after the noncompliance is discovered or reasonably should have been discovered. If the taxpayer can correct the noncompliance in the manner required, there is no recapture.

If the qualified basis of a building for which a low-income housing credit was claimed is reduced (other than in the event of certain casualty circumstances) or if the property is disposed of without the posting of a bond satisfactory to the Secretary of the Treasury, the accelerated portion of the credit for all prior years may be recaptured. There is no recapture of the credit for certain de minimis changes in qualified basis by reason of changes in the floor space of low-income housing units. For partnerships comprised of at least 35 individual partners, unless the partnership elects otherwise, no change in ownership will be deemed to occur provided that within any 12-month period, at least 50 percent (in value) of the original ownership is unchanged.

State low-income housing credit authority limitation

In general

Generally, all buildings eligible for the low-income housing credit must receive an allocation of credit authority from the State or local credit agency in whose jurisdiction the qualifying low-income housing project is located. In all cases, credit allocations are counted against a State's annual credit authority limitation for the calendar year in which the credits are allocated. Generally, credits subject to the State credit authority limitation include any credits attributable to expenditures not financed with tax-exempt bonds subject to the bond volume limitation.

The aggregate amount of such credits allocated within the State is limited by the State annual low-income credit authority limitation. The annual credit authority limitation for each State is equal to $1.25 for every individual who is a resident of the State. For purposes of the credit authority limitation, the District of Columbia and U.S. possessions (e.g., Puerto Rico, the Virgin Islands, Guam, and American Samoa) are treated as States. No credit authority is provided for years after 1989.

In general, credits may be allocated only during the calendar year in which the building or rehabilitated property is placed in service. Three exceptions are provided to this general rule. First, credits may be allocated for additions to qualified basis which occur after the building is placed in service. Second, credits may be allocated in a later year pursuant to an earlier binding agreement made no later than the year in which the building is placed in service. Third, a building may be placed in service in the year in which the credit allocation is received or in either of the two succeeding years provided that the taxpayer's basis (land and depreciable property) in the project by the close of the calendar year in which the credit allocation is made by the housing credit agency is at least 10 percent of its reasonably expected basis in the project at the time the project is placed in service. This provision applies only to credit allocations for new construction and substantial rehabilitation eligible for the 70-percent present value credit.

Nonprofit set-aside

Ten percent of each State's credit authority limitation[4] is set aside for projects in which qualified nonprofit organizations materially participate in the development and operation of the project. A qualified nonprofit organization means any organization (1) described in section 501(c)(3) or section 501(c)(4) of the Code and which is exempt from tax under section 501(a), and (2) one of the exempt purposes of which includes the fostering of low-income housing. This set-aside amount may not be decreased by State action, either legislative or gubernatorial. In addition to the special set-aside, qualified nonprofit organization projects may be allocated any additional amount of a State's remaining credit authority.

Transferability

A new owner of a building during its 15-year compliance period is eligible to continue to receive the credit as if the new owner were the original owner, using the same qualified basis and credit percentages as used by the original owner. Rehabilitation expenditures on such property may qualify for a credit in the same manner as rehabilitation expenditures on other qualifying property. The accelerated portion of credits claimed in previous years will be recaptured upon a transfer, subject to the election of the original owner to post a bond. All dispositions of ownership interests in buildings are treated as transfers for purposes of recapture, except for a special rule for certain partnerships. There is no election for the new owner to assume the recapture liability for prior year credits.

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[4] $0.125 per resident of the State.

Passive loss rules

In general

Deductions from passive trade or business activities or rental activities, to the extent they exceed income from all such passive activities (exclusive of portfolio income), generally may not be deducted against other income. Similarly, credits from passive activities generally are limited to the tax attributable to the passive activities. Suspended losses and credits are carried forward and treated as deductions and credits from passive activities in the next year. Suspended losses from an activity are allowed in full when the taxpayer disposes of his entire interest in the activity.

These limitations apply to individuals, estates, trusts, and personal service corporations. A special rule limits the use of passive losses and credits against portfolio income in the case of closely held corporations.

Special rules

$25,000 allowance in the case of rental real estate activities.--A special rule is provided for passive losses and credits attributable to rental real estate activities. In the case of rental real estate activities, a taxpayer who is an individual is allowed to deduct up to $25,000 of passive losses (to the extent that they exceed income from passive activities) if the taxpayer actively participates in the rental real estate activity (and has at least a 10-percent interest in it). The $25,000 amount is phased out ratably as the taxpayer's adjusted gross income, with certain modifications, increases from $100,000 to $150,000.

$25,000 allowance for low-income housing and rehabilitation credits.--Under a special rule, the $25,000 allowance also applies to low-income housing and rehabilitation credits (on a deduction-equivalent basis), regardless of whether the taxpayer claiming the credit actively participates in the rental real estate activity generating the credit. In addition, the adjusted gross income phaseout range for the $25,000 amount for these credits is from $200,000 to $250,000 (rather than the generally applicable phaseout range of $100,000 to $150,000).

Restrictions on use of credit to offset tax

The low-income housing credit is subject to the rules of the general business credit (sec. 38), including the maximum amount of income tax liability that may be reduced by a general business credit in any one year. This limitation generally is equal to the excess (if any) of the taxpayer's net income tax over the greater of (1) the taxpayer's tentative minimum tax for the year, or (2) 25 percent of so much of the taxpayer's net regular tax liability as exceeds $25,000.

The rules for credit carryovers provide that unused credits for any taxable year may be carried back to each of the three preceding taxable years and then carried forward to each of the 15 following years. No portion of the low-income housing credit for any taxable year may be carried back to a taxable year ending before 1987 (sec. 39(d)(4)).

Effective date

The credit generally is effective for buildings placed in service after December 31, 1986, other than property grandfathered from the depreciation rule changes made by the Tax Reform Act of 1986. Buildings placed in service after December 31, 1989, may qualify for the credit only if they meet the credit carryover allocation rules. The authority of housing credit agencies to allocate low-income housing credits expires December 31, 1989.

Reasons for Change

In general

The Subcommittee is concerned about the lack of affordable housing for people of low-income and considers it appropriate that the Federal Government play a significant role in the resolution of that problem. The low-income housing credit has proven to be a useful incentive for the increase in the housing stock available to low-income tenants. According to the National Council of State Housing Agencies (in its testimony before the Subcommittee on May 23, 1989), the credit has enabled the production of over 120,000 low-income housing units since it first became available in 1987. Furthermore, utilization of the credit has increased substantially over that period. Of the available State credit authority, only 19 percent was allocated in 1987; while 68 percent was allocated in 1988. For 1989, it is projected that over 90 percent of the State credit authority will be allocated.

Given the limited amount of aggregate credit available, however, the Subcommittee considers it necessary to take steps to improve its efficiency to ensure that as much housing as possible is created with the credit and that credit projects effectively serve State and local housing needs. Many of the provisions described in this Report have been proposed to further that goal.

Furthermore, the Subcommittee recognizes that it may be necessary to reexamine the use of Federal tax subsidies for the provision of low-income housing such as the low-income housing credit as other laws affecting the provision of low-income housing change, and as the nation's housing needs change.

Increase in affordable housing

The Subcommittee considers it desirable for the credit to be used to increase the housing stock available to low-income tenants. It is concerned that the credit not be used simply to churn the existing housing stock. Limiting the credit to new construction and buildings which are substantially rehabilitated serves as an incentive to the creation of new housing. Further, the Subcommittee is concerned that the definition of "substantial rehabilitation" under present law is inadequate to further the purpose of taking otherwise uninhabitable units and returning them to the available housing stock.

At the same time, the Subcommittee realizes that a very serious problem exists with respect to low-income housing the owners of which will soon be eligible to prepay certain low-cost Federal loans and convert their housing to market rent use.

The Subcommittee recognizes that many factors influence the cost of providing a unit of rent-restricted housing for low-income individuals and that the costs attributable to these factors may vary by area. For example, some areas have high costs for land, while other areas have high utility costs or high construction costs. When an area experiences high costs for such factors and at the same time has a relatively low area median income, rental income generated (subject to the rent restriction requirements) may be insufficient to make provision of low-income units economically feasible without further subsidy. The Subcommittee believes it is important to facilitate utilization of the credit in such difficult to develop areas.

Increased efficiency of the credit

The Subcommittee is concerned that the low-income housing credit be allocated in a manner that ensures that housing will be available to those most in need. The Subcommittee is also concerned that certain States have been allocating credits simply on a first-come first-served basis. It considers the establishment of allocation criteria and priorities essential to target the credit to those projects which will most effectively serve State and local housing needs. The Subcommittee notes that many local charitable organizations already do much valuable work in providing housing and social services to low-income individuals. It believes that the efficacy of the credit in providing low-income housing can be improved by encouraging greater involvement by local nonprofit organizations in the development and oversight of credit projects.

Improvement of marketability and administration

The Subcommittee recognizes the importance of certainty in making investment decisions. The Subcommittee believes it is appropriate to make changes to the calculation of the gross rent limitation to provide more certainty to investors. The Subcommittee also believes that it is appropriate to permit a modest increase in the allowable rent that can be charged when a qualifying tenant's income exceeds the qualifying income limitation. The Subcommittee also concludes that adjustments to the deep-rent skewing provisions are necessary.

The Subcommittee believes that encouraging the provision of low-income housing is an important goal of national housing policy. The Federal Government can foster this goal through several means, and, at this time, the Subcommittee believes that providing tax incentives to private investors to invest in low-income housing projects is the most appropriate way to achieve this aim.

In this connection, the Subcommittee is concerned that present law excludes some individuals from the pool of likely investors in low-income housing property.

Improved administrability of the credit and other issues

The Subcommittee was concerned that various features of present law intended to be primarily administrative in nature, unnecessarily interfere with the most effective utilization of the credit. For example, the frequency of change in the calculation of the credit percentage has produced uncertainty during the marketing process as to the amount of credits which will actually be available to investors. The requirement of present law that a credit allocation be received on a building-by-building basis, rather than for the project of which such buildings are a part, has also resulted in difficulty in projecting exact credit availability and project cash flows. The Subcommittee believes that it is inappropriate to have one rule governing the date on which eligible basis is determined for new construction and a different rule governing the date on which eligible basis is determined for acquisition property. Present law unnecessarily requires the filing of certain credit forms just two weeks before the Federal income tax returns of individual taxpayer investors are also due.

The Subcommittee is concerned that the complex recapture provisions of present law have been impeding marketability

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due to investor concerns about liquidity. The requirement that an investor selling an interest in a qualified low-income building post a bond satisfactory to the Secretary of the Treasury in lieu of recapture has proved burdensome, especially in light of the Treasury Department's failure to issue detailed guidance to taxpayers on the definition of a satisfactory bond. The Subcommittee also understands that some investors find it difficult to understand why their investment in a project should not be recoverable until five years after they cease to be able to claim the credit for that project. Additionally, it is concerned that there is a lack of sufficient incentives to keep credit projects properly maintained, especially during the last five years of the compliance period.

The Subcommittee believes it is inappropriate to treat those individuals who participate in government-supported job training programs as students, thereby possibly make them ineligible to qualify for housing in credit-sponsored projects.

Explanation of Provisions

In general

The Subcommittee recommendation extends the low-income housing credit (generally scheduled to expire December 31, 1989) for three additional years.

Determination of credit amount

Under the Subcommittee recommendation, no credit is allowable for the acquisition of an existing building unless a substantial rehabilitation standard is met. Generally, under this standard, qualified rehabilitation expenses must equal the greater of $3,000 per low-income unit or 25 percent of the unadjusted basis of the building. If the new substantial rehabilitation standard is satisfied, the substantial rehabilitation expenditures are eligible for the 70-percent present value credit and the existing portion of the building is eligible for the 30-percent present value credit.

A limited exception from the new substantial rehabilitation standard is available in the case of a building acquired by a taxpayer from a governmental unit or an agency thereof. Specifically, if rehabilitation expenditures average at least $3,000 per low-income unit (even if this is less than 25 percent of the unadjusted basis of the building), the taxpayer may elect the 30-percent present value credit on both the existing portion of the building and the qualified rehabilitation expenditures.

Under both the general rule and the special rule for units previously owned by or on behalf of governmental units, the rehabilitation expenditures must be on the low-income units or common areas substantially benefiting the low-income tenants (*e.g.*, replacement of a boiler, improvements to plumbing and electrical systems). Rehabilitation expenditures are those which improve the habitability of the low-income units. Expenditures of a cosmetic nature qualify as rehabilitation only when ancillary to, and an integral part of, expenditures which improve the habitability of the low-income unit.

The Subcommittee recommends that the determination of eligible basis for new buildings and substantial rehabilitation expenditures conform to that for acquisition property by allowing the determination to be made at the end of the first taxable year of the credit period. The determination of eligible basis is made before any adjustments to basis are made for depreciation allowable during the first taxable year.

The Subcommittee recommends that in areas which are designated by the Secretary of HUD as difficult to develop, the eligible basis of a new building or the eligible basis of rehabilitation expenditures in the case of an existing building undergoing substantial rehabilitation be deemed to be 130 percent of eligible basis claimed for depreciation. This calculation of eligible basis would not be available to federally-subsidized buildings.

The Subcommittee recommends that no more than 20 percent of metropolitan areas be designated as difficult to develop and that no more than 20 percent of nonmetropolitan areas be designated as difficult to develop. The percentage limitation is based on the population of the designated metropolitan area relative to the population of all metropolitan areas, and similarly for nonmetropolitan areas.

In determining which areas are difficult to develop, the Subcommittee recommends that the Secretary of HUD consider several factors. It may be costly to produce low-income housing in one area relative to the rest of the country because that area has higher land costs than the rest of the country. Alternatively, the costs of producing low-income housing in that area may be higher than elsewhere because that area has higher construction costs or higher utility costs than the rest of the country. A combination of the above factors may make it more costly to provide low-income housing in some areas than in others. In determining whether an area's costs are high relative to the rest of the nation, the Secretary of HUD may find it appropriate to use indices of land costs, construction costs, and utility costs. Alternatively, the Secretary may find it appropriate to use private market rents (not subject to rent control or other restrictions) as indicative of the cost of providing rental housing units in a given area.

However, the Subcommittee recognizes that it is not costs alone that make an area difficult to develop, but rather the costs of providing a low-income housing unit compared to the rental income that low-income housing unit will generate. The Secretary of HUD should, therefore, compare an area's costs to an area's median income in reaching the determination that an area is difficult to develop. Consequently, it is possible that one area's costs of providing housing are low relative to similar costs nationwide, but the area's income is sufficiently low that the Secretary would designate the area as difficult to develop.

Credit Percentage

The Subcommittee recommendation provides that the credit percentages are to be determined on a semi-annual, rather than a monthly, basis.

Qualified Basis

The Subcommittee recommendation provides that a unit will not qualify as a low-income unit unless it is suitable for occupancy as determined under regulations issued by the Secretary of the Treasury taking into account local health, safety, and building codes. The Subcommittee expects that minor code violations and violations that are promptly rectified will not result in a unit ceasing to be a low-income unit.

Eligible Basis

The Subcommittee recommendation modifies the 10-year rule by adding a category of property eligible for waiver of the rule by the Secretary of the Treasury. Specifically, the 10-year rule may be waived for a federally-assisted building (defined as under present law) if the mortgage on the building is eligible within one year of the application for waiver for prepayment under the Emergency Low Income Housing Preservation Act of 1987 or under the Housing Act of 1949 and either HUD or FmHA certifies that the building will be converted to market use absent the waiver. If this waiver is granted, the mortgagor must agree not to prepay the mortgage.

The Subcommittee recommendation imposes limitations on the availability of the credit to certain properties. First, properties receiving assistance under the HUD section 8 moderate rehabilitation program would be denied any eligibility for the credit. Second, properties receiving assistance under the HUD section 8 project-based certification program would be ineligible for the acquisition credit, whether or not they were substantially rehabilitated.

Minimum set-aside requirement for low-income individuals

The Subcommittee recommends clarifying present law by ensuring that students in governmentally-supported job training programs, defined as the Job Partnership Training Act and similar Federal or State programs, are deemed to be eligible tenants.

Gross rent limitation

The Subcommittee recommends certain changes in the rules regarding the calculation of the gross rent limitation. The deep-rent skewing rule is modified to provide that the rents charged for non-rent-restricted units need be only at least 200 percent of those charged for comparable rent-restricted units. The proposal also provides that the incomes used in the calculation of the set-aside for purposes of both section 42 and section 142(d) (relating to tax-exempt bonds for residential rental property) are no longer to be adjusted for actual family size. Instead, each unit is presumed to house a certain number of people based upon the number of bedrooms in the unit. A studio apartment is presumed to house one person and each bedroom of a unit is presumed to house 1.5 persons.[5]

For example, the applicable income limitation for a three-bedroom unit is determined by adding to the section 8 very low-income figure for a family of 4 half of the difference between the income figure for a family of 4 and the very low-income figure for a family of 5. Finally, gross income is to be determined without regard to section 7872(g) of the Code (relating to certain imputed interest) for purposes of both section 42 and section 142(d).

The Subcommittee also recommends that once the gross rent limitation is established for a unit's first tenants, the gross rent limitation for that unit need not be reduced by reason of a decline in area median income.

The Subcommittee recommendation provides that in those cases where a qualifying low-income tenant's income has increased beyond 100 percent of qualifying income but is less than 140 percent of qualifying income the tenant's rent may be increased beyond the gross rent limitation applicable to the unit. Specifically, for each $100 by which the tenant's income exceeds 100 percent of qualifying income, the tenant's annual rent may be increased by $10.

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[5] The Subcommittee intends that the Secretary of the Treasury, in consultation with the Secretary of HUD, issue regulations detailing the minimum living area which must constitute a bedroom and prohibiting general living or dining areas from being claimed as bedrooms for those units which are not studios.

Qualified low-income housing projects and qualified low-income buildings

The Subcommittee recommendation provides that 80 percent of the qualified basis of an owner-occupied building with four or fewer units is made eligible for the credit if the acquisition or rehabilitation of the building occurs as part of a development plan sponsored by a State or local government or qualified nonprofit organization.

The Subcommittee recommendation provides that buildings located on disparate or scattered geographic sites may be deemed to be a single project both for purposes of credit allocation and compliance, provided that 100 percent of the units are rent-restricted units with tenants satisfying the qualifying income limitations. As under present law, all of the buildings must be financed pursuant to a common plan of financing and owned by the same person for Federal income tax purposes.

Compliance period and penalty for noncompliance

The Subcommittee recommendation extends the period over which the credit is received to 15 years to coincide with the compliance period and eliminates the use of the term "compliance period". The extension to a 15-year credit period maintains the present value of credits received to the otherwise applicable present value. The Subcommittee recommendation also repeals the bond posting requirement and the recapture provision imposed under present law in the event of noncompliance. If noncompliance does occur, the current owner is denied credits for the portion of the year that the building is in noncompliance and credits for all future years until the building is brought back into compliance. Also, the owner at the time noncompliance occurs is subject to a penalty equal to the highest amount of credit allowable for any one year of the credit period. The only consequence of a reduction in qualified basis which does not result in noncompliance with the set-aside requirement is the inability to claim future credits to the extent, and during the period, of such reduction.

The Subcommittee recommendation denies the credit to otherwise qualified property unless the owner of that building is subject to an enforceable agreement with the housing credit agency which prohibits (1) eviction of low-income tenants for other than good cause and (2) any increases in the gross rent for low-income units in excess of allowable rents under the rules applicable during the 15-year credit period. The agreement must be binding on all successors to the original owner and must grant tenants the same enforcement rights in State court afforded to the housing credit agency. This agreement is required to be effective during the 15-year credit period and at all times thereafter. This provision contemplates a remedy of specific enforcement in the State courts but does not create a remedy under Federal law. As low-income tenants eventually move from the project after the credit period, units in the project may be converted to market rents.

State low-income housing credit authority limitation

The Subcommittee recommendation provides for a one-year carryforward by the housing credit agency of unallocated low-income housing credits. If the amount carried forward is not allocated by the end of the second year, it expires.

The Subcommittee recommendation provides that the credit be allocated on a project basis, rather than on a building-by-building basis as under present law. The credit allocation is to be divided among the buildings in the project as they are placed in service. The taxpayer must irrevocably designate that a building is part of a larger defined project at the time the credit is first allocated to it. In the absence of such a designation by the taxpayer, the Secretary shall treat the project as consisting solely of one building. To receive a credit allocation for the entire project, rather than only those buildings placed in service during the year of the allocation, the taxpayer must still satisfy the present law rules for a carryover allocation, except that such carryover allocation need not be divided among the buildings at the time of the allocation.

The Subcommittee recommendation requires that the housing credit agency adopt an allocation plan containing selection criteria for ranking the various projects applying for credit allocations. The selection criteria must include project location (e.g., broad geographic distribution, designated targeted areas such as inner cities, Community Development Block Grant neighborhoods, distressed communities, pockets of poverty, and rural areas), housing needs characteristics (e.g., low vacancy rate, economic mix within the project, and meeting State, regional, or local housing needs and priorities), project characteristics (e.g., whether the project increases the stock of low-income housing, whether substantial rehabilitation expenditures are needed by the project, energy conservation, quality of units, and type of financing), sponsor characteristics (e.g., nonprofit sponsorship and minority participation in development and management), and tenant populations with special housing needs (e.g., elderly, handicapped, disabled, homeless, large families, and displaced).

Once the agency has selected its projects, it must allocate the housing credit dollar amounts by giving preference to projects serving the lowest income tenants, projects obligated to serve tenants for the longest periods, and projects providing the largest number of square feet of housing per dollar of credit.

Additionally, the agency may not allocate more credit to a project than it determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. In making this determination, the agency shall consider the sources and uses of the funds and the total financing planned for the project as well as the proceeds or receipts expected to be generated by reason of tax benefits.

The Subcommittee anticipates that the housing credit agency will require developers to list financial information in their credit applications. Such information would include a breakdown of sources and uses of funds sufficiently detailed to enable the agency to ascertain where and what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised. The following cost information should be required, whether or not includible in eligible basis: site acquisition costs, site preparation costs, construction costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, and syndication and legal fees and other costs. Costs, including developer fees, should be examined by the agency for reasonableness. The Subcommittee also contemplates that agencies require the submission of _pro formas_ setting forth the anticipated project cash flows.

The Subcommittee recommendation requires that the housing credit agency approval process take a form similar to that required by section 147(f)(2) of the Code with respect to the approval of the issuance of tax-exempt private activity bonds. Such approval may not occur until after a public hearing with reasonable public notice and an opportunity for those interested to present their views. The referendum provisions of section 147(f)(2) are not applicable.

The Subcommittee recommendation limits the 10-percent set-aside for nonprofits to nonprofits which are responsible to residents of the neighborhood in which the project is located through a governing board more than half the members of which are residents of the area served by the project. In addition, the nonprofit or its affiliate must have operated in the area of the project for at least three years before its participation in the project. Finally, the nonprofit must be primarily responsible for the management of the project throughout the credit period.

Transferability

The Subcommittee proposal eliminates the requirement that a taxpayer disposing of any portion of its interest in a qualified low-income building post a bond satisfactory to the Secretary of the Treasury. Furthermore, it clarifies present law that in the case of a disposition of an ownership interest during the course of a calendar year the credit is to be allocated pro rata between the seller and purchaser according to the number of days of ownership.

Passive Loss Rules

The Subcommittee recommendation modifies the application of the passive loss restrictions on the low-income housing credit by removing the adjusted gross income limitations on the $25,000 deduction equivalent allowance of the credits with respect to rental real estate activities. Thus, up to a $25,000 deduction equivalent amount of credits is available to an individual under the Subcommittee recommendation, regardless of his adjusted gross income.[6]

Trusts and Estates

Under the Subcommittee recommendation, the amount of credit and any penalty with respect to the credit is apportioned between beneficiaries and a trust or estate on the basis of income allocable to each.

Administrative provisions

The Subcommittee recommendation conforms the date for the filing of required credit forms to the date of filing of the taxpayer's Federal income tax return. The Subcommittee recommendation also authorizes the Treasury Department to issue regulations permitting housing credit agencies to correct administrative errors and omissions with respect to allocations.

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[6] The Subcommittee also ordered reported a provision removing the adjusted gross income limits on the deduction equivalent amount of rehabilitation credits with respect to rental real estate activities. Thus, under the two Subcommittee recommendations, the $25,000 (deduction equivalent) allowance of present law is retained but no adjusted gross income limits apply under the $25,000 rule for either low-income housing credits or rehabilitation credits.

Effective Dates

The Subcommittee recommendation is generally effective for determinations made under section 42 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989. For projects not subject to the credit allocation limits, the provision generally applies to buildings placed in service after December 31, 1989.

The provision which removes the adjusted gross income limitation for low-income housing credits under the passive loss rule is effective in taxable years ending after December 31, 1989, for property placed in service after December 31, 1989. In addition, if the property is held through a partnership or other passthrough entity, the taxpayer's interest in the partnership or other passthrough entity must have been acquired after December 31, 1989.

The provisions relating to the eligibility of certain job training program participants, the treatment of trusts and estates, the pro rata rule upon transfer of property, and the provision of regulatory authority for the correction of errors in the allocation process are effective as if enacted in the Tax Reform Act of 1986. The new 10-year rule waiver provision is effective on the date of enactment.

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